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NO. 2007-54438

4 DAVID AND KATHLEEN) IN THE DISTRICT COURT
PLUCHINSKY, INDIVIDUALLY)

5 AND AS REPRESENTATIVES)
OF THE JOHN ALBERT)

6 PLUCHINSKY ESTATE)
Plaintiffs)

7

VS.) HARRIS COUNTY, TEXAS

8

) HOUSTON RACQUET CLUB,)

9 STEPHEN GRIFFIN, DAVID)
LAMKIN, GUILLERMO)

10 PALMER, AND)

LG Supv,)

11

) Defendants) 281st JUDICIAL DISTRICT

12

13

VIDEOTAPED ORAL DEPOSITION OF

14

DAVID LAMKIN

FEBRUARY 29, 2008

15

Volume 1

16

17 ORAL AND VIDEOTAPED DEPOSITION OF DAVID LAMKIN,

produced as a witness at the instance of the

18 Plaintiffs, and duly sworn, was taken in the

above-styled and numbered cause on FEBRUARY 29, 2008,

19 from 10:38 a.m. to 7:08 p.m., before Sherry Hale, CSR

in and for the State of Texas, reported by machine

20 shorthand, at the offices of Tucker, Taunton,

Snyder & Slade, 10370 Richmond Avenue, Suite 1400,

21 Houston, Texas, pursuant to the Texas Rules of Civil
Procedure.

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A P P E A R A N C E S

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FOR THE PLAINTIFFS:

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15 ALSO PRESENT:

Stephen Griffin
16 David Pluchinsky
Kathleen Pluchinsky
17 Guillermo Palmer
Ray Draper, Videographer

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2 VIDEOGRAPHER: On the record. Today's
3 date is Friday, February the 29th, the year 2008.
4 The time is 10:38 a.m.

5 THE REPORTER: Would you raise your
6 right hand please so I can place you under oath?

7 THE WITNESS: (Witness complies.)

8 THE REPORTER: Do you solemnly swear
9 that the testimony you are about to give in this
10 cause shall be the truth, the whole truth, and
11 nothing but the truth, so help you God?

12 THE WITNESS: Yes.

13 DAVID LAMKIN,
14 having been first duly sworn, testified as follows:

15 EXAMINATION

16 BY MR. MARRS:

17 Q. Good morning, Mr. Lamkin.

18 A. Good morning.

19 Q. Can you give us your full name?

20 A. Robert David Lamkin.

21 Q. And you are employed by the Houston Racquet
22 Club, sir?

23 A. Yes, sir.

24 Q. My name is Scott Marrs. I'm here together
25 with Matt Pletcher and we are honored to represent

□00005

1 the Pluchinsky family in this case. You understand
2 that the defendants include the Racquet Club as well
3 as a number of individuals including yourself, sir?

4 A. Yes, sir.

5 Q. You understand that your -- all of your
6 testimony given here today will be individually and
7 as corporate representative of the Houston Racquet
8 Club?

9 A. Yes, sir.

10 Q. Can you tell me what your position is at the
11 Houston Racquet Club currently?

12 A. My title is fitness director.

13 Q. What other titles have you held with the
14 Houston Racquet Club?

15 A. I've had -- I've had other responsibilities,
16 but it's always kind of been fitness director.

17 Q. Okay. What other kind of titles have you
18 held, even though they might have been kind of
19 informal titles?

20 A. Okay. Let's see, I was -- I was in charge
21 of the swim team, the pool, men's and women's locker
22 room, the summer camp. I'm in charge of the yoga
23 program, the massage program and our personal
24 trainers.

25 Q. Okay. And did you have any titles other

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1 than fitness director, even if you had them
2 concurrently with being fitness director, such as
3 camp director?

4 A. Pool manager.

5 Q. Okay. Were you camp --

6 A. Yes, I was camp director.

7 Q. When?

8 A. I guess in the mid '90s to probably maybe
9 four or five years ago. And I was still -- I was
10 still -- I gave the title, but I was still camp
11 director. I was still responsible for everything.

12 Q. And you were still responsible for the
13 summer camp even in 2007 summer camp, correct?

14 A. Yes.

15 Q. But you say you gave the title to who?

16 A. The person who do day-by-day work. It would
17 be CD last year, 2007.

18 Q. What were her -- Well, so you're saying that
19 CD was kind of informally camp director
20 for the 2007 summer camp?

21 A. Yes.
22 Q. And that was the first time she had been
23 involved to that degree day-to-day was the 2007
24 summer --

25 A. 2006 she shared that title with

□00007

1 DS.

2 Q. Your wife?

3 A. Ex-wife.

4 Q. Okay.

5 A. She -- because 4 y/o B-CC #1 was -- had taken a job
6 as a nurse, the -- had taken a job, so her and CD
7 began to share those with CD being on campus the
8 majority of the time.

9 Q. Okay. Tell me what CD 's
10 day-to-day duties were, as -- as you say informal
11 camp director for the 2007 summer camp?

12 A. There was -- she would start her day -- this
13 would be Tuesday through Friday. She'd start the day
14 at about 8:30 with our safety and morning meeting.
15 In between 8:30 and 8:45 we would do that -- she
16 would do that, but -- she was in charge of that. She
17 would -- once the children, everybody got there and
18 located in their proper groups, she would release
19 them by about 9:15 to go into whichever direction
20 they were going to go.

21 Q. Okay. Whatever direction in accordance
22 with, I guess, the -- where it says Summer Camp News,
23 the schedule?

24 A. Yes.

25 Q. That's for the kids?

□00008

1 A. Right.

2 Q. Is that what your --

3 A. If you go to the tennis courts, it would be
4 out the --

5 Q. Okay. And when you say that CD
6 would meet at 8:30 to 8:45 with the kids, what do you
7 mean when you say the kids?

8 A. I'm sorry, the counselors.

9 Q. Okay. Was she responsible for meeting with
10 or supervising in any way the lifeguards?

11 A. No.

12 Q. Okay. And during this approximate 15-minute
13 meeting she would have, would it be every morning
14 with the counselors?

15 A. Every morning.
16 Q. And what was the purpose of those meetings?
17 A. Just to make sure that everybody -- if there
18 had been any new programs, if we were meeting Mad
19 Science or if there was something -- just a morning
20 briefing and then to -- she was a big stickler on the
21 count and stuff like that, so she would -- she would
22 continue to hammer those things. But any new items
23 for that day, that would be the time that she would
24 go over it with counselors.
25 Q. Okay. And when you say "the count," what do

□00009

1 you mean by that?
2 A. Because we -- you can't leave -- we have a
3 clipboard that has the names of each child on it and
4 you start at a location and end at a location. You
5 do a count start and ending -- end to end.
6 Q. So that you account for how many children
7 you have that are being watched by the counselors?
8 A. Exactly.
9 Q. And where those children are going to be
10 throughout the day?
11 A. That's on -- that's not on -- that's on the
12 clipboard, it's not on the -- we also have a separate
13 sheet that has the children's name and attendance
14 sheet and who's there for that day --
15 Q. Okay.
16 A. -- or any special notes that we'd put like
17 if whatever, somebody has no lunch that day or
18 whatever, there's a space for a notation.
19 Q. And at what time are the kids supposed to be
20 dropped off by the parents at 2007 summer camp?
21 A. Our start -- our start time is 9:00 o'clock,
22 not -- 9:00 to 1:00 Tuesday through -- Tuesday
23 through Friday.
24 Q. Okay. So, they -- the counselors would be
25 released as you say from this 15-minute counselor

□00010

1 meeting by CD so that they could then go to --
2 where would they go from there, the counselors?
3 A. After the meeting with CD ?
4 Q. Yes, sir.
5 A. Say there's four counselors in a group, two
6 would -- two would go back to the -- we locate -- if
7 it wasn't raining, we would locate it at -- there's
8 two tennis courts, Tennis Court 24 and 25 behind our

9 camp house. Two from each group or at least two
10 would go back there in their whatever locations CD
11 or whoever had picked out for them and two would work
12 the car pool. Two would walk over to the car pool.

13 Q. Okay. That was my next question. Who-all
14 was responsible for working the car pool, in other
15 words, to help assist, take custody of the children
16 when they are dropped off by their parents?

17 A. Random.

18 Q. Random?

19 A. It would be random.

20 Q. Okay.

21 A. You would split your group up. We didn't
22 choose, you know, like counselor A is always going to
23 work car pool.

24 Q. Okay.

25 A. Although aggressive counselors wouldn't --

□00011

1 would not mind doing that.

2 Q. Okay.

3 A. I mean, it's a lot of walking and stuff like
4 that, so...

5 Q. Although --

6 A. But it was random.

7 Q. Although random, would it always be
8 counselors or would it sometimes be lifeguards?

9 A. No, no.

10 Q. Would it be other people?

11 A. No. But a parent, some parents would walk
12 their kids back, some -- sometimes children are
13 reluctant to --

14 Q. Right.

15 A. -- you know, so they were welcome to walk
16 back as well, but always with a counselor.

17 Q. Okay.

18 A. The counselor will take them to the group.

19 Q. All right. And have you yourself worked car
20 pool before?

21 A. Yes, many times.

22 Q. And when, let's say an SUV pulls up and mom
23 and her two kids are there and they are being dropped
24 off, how does that work? How does it work? Do you
25 have a clipboard with you so you can check off that

□00012

1 someone has arrived?

2 A. No. The counselor would get out and -- or

3 the counselor would go to the door and open the door,
4 we're probably two or three cars back and we open the
5 door and they would say whatever, "Good morning."
6 And we were to make sure they had their lunches and
7 they would -- they would come out. By the second or
8 third day, most everybody knew the kids' names and
9 you'd say, "Good morning." And a lot of it's
10 members, so -- and a lot of our counselors are
11 members' children, so we would -- we would know -- as
12 fast and informal meeting as you could have, so the
13 car pool continues to move along.

14 Q. Right. Okay. And it's important that it be
15 efficient and that the kids be able to be dropped off
16 and the cars keep moving, so everybody who's going to
17 be at the camp can be there timely, correct? Is that
18 right?

19 A. Yes.

20 Q. And you say -- what else, what other
21 conversation occurs generally with the parents at
22 that time other than "good morning" and you make sure
23 that the kid has their lunch, of course, so they can
24 eat that day. Is there anything else that you
25 require your counselors or whoever is working the car

□00013

1 pool to ask or inquire of the parents?

2 A. No. I don't -- and CD might speak more
3 to that, but we do not -- we don't ask anything
4 else. But if a mom or dad would drive up and go,
5 "Grandpa is picking up the child," that has to be in
6 writing, so they might go park because we would have
7 to have that in writing. That would -- and then the
8 counselor would turn that into CD.

9 Q. Okay.

10 A. And she had her -- she had her master
11 clipboard.

12 Q. Have you ever asked a parent, you know,
13 "This kid doesn't have a life vest, should he have a
14 life jacket today at summer camp?"

15 A. No, sir, I've never asked anybody. I've
16 never asked the parent.

17 Q. Has any of your counselors asked a parent
18 that when they drop their kids off for summer camp,
19 to your knowledge?

20 MR. SNYDER: Objection, form.

21 A. I don't -- I don't know.

22 Q. (BY MR. MARRS) Okay. But you have never

23 heard of that, correct?

24 A. No.

25 Q. Is that correct?

□00014

1 A. Yes, that's correct.

2 Q. Okay. And certainly, you don't require your
3 counselors to ask that?

4 A. No, we don't.

5 Q. And why is that?

6 A. Because we don't require -- we don't require
7 the children to have life jackets if they come to our
8 camp.

9 Q. Okay. If they come to your camp, you're
10 going to make sure that if they are in your pool in
11 your total custody, you're going to make sure they
12 are safe in your pool, correct?

13 A. Yes.

14 Q. And you're going to make sure that if they
15 need a life jacket that either they don't get in the
16 swimming pool or that they have a life jacket when
17 they do get in, correct?

18 A. We --

19 MR. SNYDER: Objection, form.

20 A. I require all my counselors to be in the
21 water when children are in the water. If a parent
22 wants their children to wear a life jacket, then they
23 will. They -- that's what we would do.

24 Q. (BY MR. MARRS) Of course. But the reason
25 you say that we require the counselors to be in the

□00015

1 water at all times with the children is if they are
2 in the water watching the children in summer camp,
3 the children shouldn't have to have life jackets,
4 correct?

5 MR. SNYDER: Objection, form.

6 Q. (BY MR. MARRS) Otherwise, you would require
7 it to keep them safe, correct?

8 MR. SNYDER: Objection, form.

9 A. We leave it to the parents to decide on the
10 life jackets. I put them in the -- I put the
11 counselors in the water so that the children are
12 never in the water without a counselor.

13 Q. (BY MR. MARRS) And what discussions did you
14 have with the Pluchinskys about whether or not their
15 children needed a life jacket or some kind of
16 flotation device, if any?

17 A. I don't believe I've ever talked to Mr. and
18 Mrs. Pluchinsky.

19 Q. Did anyone from the Racquet Club make any
20 inquiry of the Pluchinskys about whether or not their
21 children needed life jackets or some kind of
22 flotation device, to your knowledge?

23 A. No, sir, not to my knowledge.

24 Q. Shouldn't your counselors assume that
25 four-year-old children are not good swimmers --

□00016

1 MR. SNYDER: Objection, form.

2 Q. (BY MR. MARRS) -- when they get in the
3 family pool?

4 MR. SNYDER: Objection, form.

5 A. I don't think -- I don't think they -- I
6 don't think they assume -- I don't think we assume
7 that or they assume that, no.

8 Q. (BY MR. MARRS) Well, the fact is that you
9 should not assume anything about the swimming
10 abilities of a four-year-old child, correct?

11 A. Correct.

12 Q. If you're going to put a four-year-old child
13 in your family pool, you should make sure for
14 yourself as the counselor that it is safe for that
15 child to be in whatever portion of water you put them
16 in, correct?

17 A. Yes.

18 Q. And you should not leave that child
19 unsupervised for any amount of time; isn't that true?

20 MR. SNYDER: Objection, form.

21 A. And we don't -- and our counselors don't.

22 Q. (BY MR. MARRS) But you'll agree with that,
23 correct?

24 A. I'm sorry, say it one more time.

25 Q. I'll be happy to.

□00017

1 You say you don't what?

2 A. Our counselors don't let the children get in
3 the pool without them being in there with them.

4 Q. Constant, close supervision of
5 four-year-olds is required for a safe environment in
6 a pool, isn't it?

7 A. Yes.

8 Q. Because you know and your counselors, of
9 course, are told that even a split second could
10 result in an unsafe environment in the pool if you're

11 not watching, correct?
12 A. Yes.
13 Q. You've seen hundreds of four-year olds in
14 your family pool, haven't you?
15 A. Yes, sir.
16 Q. As many as a thousand or more?
17 A. I don't -- I don't know. A lot.
18 Q. A lot. How many have you seen in your
19 family pool during camp wearing a life jacket?
20 A. I don't -- I don't know a number, a few.
21 Q. A few. One, two; how many approximately?
22 A. It would be -- it would be a guess. A few,
23 I guess.
24 Q. Three?
25 A. Maybe more than that.

□00018

1 Q. Four?
2 A. I've been there for many years, so --
3 Q. Okay.
4 A. -- in the whole time frame.
5 Q. So give me a guess, four or five children?
6 A. I don't want to guess.
7 Q. Okay. You say a few. Now, a handful?
8 A. A handful.
9 Q. Okay. And how many years have you seen
10 four-year olds in your family pool?
11 A. Two years.
12 Q. Two years, hundreds of children?
13 A. Well, I meant -- I'm sorry, we have a new
14 facility, I apologize.
15 Q. Exactly. And when you --
16 A. A new facility.
17 Q. When you said before, oh, well, I've been
18 there many, many years seeing four-year olds --
19 A. I was also referring to our other pool as
20 well.
21 Q. Correct. And so, how many years would that
22 be that you've seen four-year olds in your pools at
23 the Racquet Club?
24 A. And my answer, it was for all those years.
25 I was referring to that, just a handful of them.

□00019

1 Q. I understand. I'm just trying to figure
2 out --
3 A. No, no, I know.
4 Q. -- how many years that's been. That's my

5 question.

6 A. I've been there since 1990.

7 Q. Okay.

8 A. And I've been involved with the pool since,
9 I think, '96 possibly and so...

10 Q. So for -- since 1990, some 17 years at least
11 that you've been at the Racquet Club, seen four-year
12 olds around the pool areas of the Racquet Club, only
13 a handful of times have you seen four-year olds
14 wearing a life jacket?

15 A. Yes.

16 Q. Now, who do you report to?

17 A. My bosses are Carlos Salazar, which is the
18 assistant manager and Steve Griffin.

19 Q. And --

20 A. And, of course, the board of directors. I
21 mean, any board member would be able to make
22 suggestions to me.

23 Q. Okay. And 2007 summer camp, was that the
24 same structure then as what you're describing Carlos
25 and Mr. Griffin?

□00020

1 A. Yes, sir. And Carlos is actually the club
2 manager. He's more located at our other building.
3 My interaction with him is quite limited.

4 Q. And when you say "other building," what are
5 you referring to?

6 A. Our main -- our main clubhouse. We have a
7 new facility where the fitness center is.

8 Q. Who is to -- between Carlos and Mr. Griffin,
9 really has the responsibility of making sure that you
10 are doing your job correctly?

11 A. Mr. Griffin.

12 Q. Okay. The gentleman who testified
13 yesterday?

14 A. Yes.

15 Q. And you were here during his entire
16 testimony for the last two days, correct?

17 A. Yes.

18 Q. Is there any testimony he gave that you
19 disagreed with?

20 MR. SNYDER: Objection, form.

21 A. I don't think so. I think for the most
22 part, I -- Steve is -- yeah, I agree with most of
23 everything Steve said.

24 Q. (BY MR. MARRS) You say most. Is there

25 anything in particular that you know of that you
□00021

1 disagreed with that Mr. Griffin testified to during
2 the last two days?

3 MR. SNYDER: Objection, form.

4 A. Would I have to look at every -- I'd
5 probably want to look at every question. I can't
6 remember all the stuff. I --

7 Q. (BY MR. MARRS) Anything that sticks out in
8 your mind?

9 A. No. No, sir.

10 Q. And are you a certified lifeguard?

11 A. No.

12 Q. Have you ever been?

13 A. In 1977 I was in college and I took a
14 lifeguarding -- a lifeguarding course. I never did
15 that. I never worked as a lifeguard, though.

16 Q. Did you become certified as a lifeguard?

17 A. You know, I'm not sure that I passed the
18 course. I never went and got a card and stuff. They
19 had to do a 500 mile -- 500 -- I'm sorry, 500-yard
20 swim and I'm not sure I did that, so I was never a
21 lifeguard.

22 Q. Okay.

23 A. I never assumed the position on a stand or
24 anything.

25 Q. So, you've never been certified as a

□00022

1 lifeguard nor have you ever acted as a lifeguard; is
2 that correct?

3 A. Right.

4 Q. How about CPR? You've been certified in CPR
5 before, correct?

6 A. Many times.

7 Q. How many times?

8 A. The first time would have been in '77 with
9 the lifeguarding course I took. Again, in '79 when I
10 worked at a job that required it. And then as a --
11 later on, certainly for the last -- I've been

12 going -- I go through American Heart Association,
13 which is a two-year course. And so at least for
14 eight to 10 years probably; maybe a little longer.

15 Q. Continuously or from time to time it would
16 lapse and then you would pick it up later?

17 A. No. Always continuous.

18 Q. For the last almost decade?

19 A. Maybe a little longer.
20 Q. Okay. Ever through the American Red Cross?
21 A. No. I take that back. I'm -- I don't
22 know. That first one may have been.
23 Q. Okay.
24 A. But back in '77 and -- or seventy -- in
25 '79. I don't remember, but certainly in the last
□00023

1 few times.
2 Q. And have you ever been a CPR instructor?
3 A. Yes.
4 Q. When?
5 A. I guess for four years. My renewal date is
6 coming up June of 2008.
7 Q. Through who?
8 A. American Heart Association.
9 Q. Had you ever been a CPR instructor prior to
10 this four-year time period?
11 A. No, sir, unless it's six years. It's either
12 four or six years, but not before that. I've been
13 continuous with this organization.
14 Q. For the last four or six years --
15 A. Right.
16 Q. -- you've been a CPR instructor?
17 A. Right.
18 Q. And never had been prior to that?
19 A. No.
20 Q. Is that correct?
21 A. Yes.
22 Q. And so, obviously you know that performing
23 CPR correctly is vital to saving someone's life who
24 may be in cardiac arrest or otherwise, correct, sir?
25 A. Yes, sir.

□00024
1 Q. Why is it important to do it correctly?
2 A. Well, it just makes it -- it's more -- it's
3 more efficient. I mean, a layman can do it and an
4 operator can -- on 911 can tell a layman how to do
5 it, but it's just more efficient if you -- you know,
6 you -- well, it's just more efficient.
7 Q. Okay. And whether or not CPR being
8 performed by someone on a victim is efficient or not
9 efficient may make the difference between that victim
10 living or not, correct?
11 MR. SNYDER: Objection, form.
12 A. I don't think so.

13 Q. (BY MR. MARRS) So, you think if someone is
14 being inefficient and not doing CPR correctly, that
15 it really doesn't matter --

16 MR. SNYDER: Objection, form.

17 Q. (BY MR. MARRS) -- in terms of
18 survivability?

19 A. I can't speak to that. I -- really I can't.

20 Q. Well, you're a CPR instructor.

21 A. Right. If you -- if you do CPR efficiently,
22 it works. If you -- if you don't, if you do just
23 chest compressions, you still circulate blood and
24 that's still -- it's still good.

25 Q. But if you don't do -- I mean, certainly you

□00025

1 believe that anyone who is going to perform CPR and
2 is in a position where they are required to be
3 certified in CPR to be safe and to save lives, they
4 should do it correctly. You'll agree with that,
5 won't you?

6 A. I agree with that.

7 Q. Are you AED certified?

8 A. Yes. That's part of -- that's part of the
9 American Heart Association's certification.

10 Q. And you have been AED certified for how
11 long?

12 A. Four to six -- the whole time I've had my
13 CPR since I started and as an instructor as well.

14 Q. And so, during that four- or six-year time
15 period you have been not only a CPR instructor, but
16 also an instructor in the proper use of AEDs,
17 correct?

18 A. Yes.

19 Q. And not just the proper use of an AED, but
20 of course you need to know and instruct others on
21 when to use an AED and when not to, correct?

22 A. That's part of the training.

23 Q. And knowing to utilize an AED timely is very
24 important, isn't it?

25 MR. SNYDER: Objection, form.

□00026

1 A. If you're going to use an AED, you want to
2 do it as fast as you can.

3 Q. (BY MR. MARRS) Okay. And to do it fast,
4 the people that are in charge of protecting lives and
5 that have to be certified in AED darn well better
6 know where the AED is so they can get it fast, right?

7 A. I agree with that.

8 Q. Correct?

9 A. Yes.

10 Q. And if you're going to allow four-year olds
11 in your pool, you darn well better make sure that the
12 AED device at your facility is appropriate for use
13 for whatever age children you are allowing in your
14 pool, correct?

15 MR. SNYDER: Objection, form.

16 A. Not necessarily.

17 Q. (BY MR. MARRS) No?

18 A. No.

19 Q. And tell us why.

20 A. Because pediatric AEDs are relatively new.

21 I mean, we bought ours not too long ago and they did
22 not have that option on there.

23 Q. And how long ago was that?

24 A. I'm not sure. I think at least seven to 10
25 years possibly, but I don't -- I don't know. I don't

□00027

1 know really.

2 Q. Okay. So is it your testimony that even
3 though you're allowing four-year olds in your pool
4 and even though pediatric AED devices are available,
5 it's okay if you don't have one before you let
6 four-year olds in your pool?

7 A. Yes, I think so.

8 MR. SNYDER: Objection, form.

9 Q. (BY MR. MARRS) You think that's okay?

10 A. Yes.

11 Q. Okay. So then you think it's okay if a
12 four-year-old drowning victim in one of your pools
13 does not have the advantage of more than just CPR if
14 he is in cardiac arrest because you simply chose not
15 to get an AED that was available to your club, but
16 that four-year old didn't have the opportunity to
17 survive by use of an AED because your club simply
18 chose not to get one even though it was available?

19 MR. SNYDER: Objection.

20 Q. (BY MR. MARRS) Is that your testimony?

21 MR. SNYDER: Objection, form?

22 A. The club -- The club did have AEDs. We had
23 three of them and John had -- CPR was being done on
24 John almost immediately.

25 Q. (BY MR. MARRS) True. Okay. If that's

□00028

1 true, then -- strike that.

2 How long have pediatric AED devices
3 been available?

4 A. I'm not sure.

5 Q. But you know for a fact that AE -- pediatric
6 AE devices were available prior to the 2007 summer
7 camp, correct? You know that, don't you?

8 A. I think so, yes.

9 Q. Well, is it part of your training to be an
10 AED instructor is the use of AEDs on infants?

11 A. Yes.

12 Q. And you know also that there are -- there
13 are pediatric pads for AED devices, aren't they?

14 A. Yes.

15 Q. The three AED devices that the Racquet Club
16 had, did it have any pediatric pads that would work
17 with those AED devices?

18 A. No.

19 Q. Why not?

20 A. We weren't --

21 MR. SNYDER: Objection, form.

22 A. We weren't aware that -- I just wasn't
23 aware.

24 Q. (BY MR. MARRS) Of what?

25 A. That we had that option.

□00029

1 Q. If you were aware that there was that
2 option, in other words, that pediatric pads were
3 available for use with the AED devices that you had,
4 would you have gotten them --

5 MR. SNYDER: Object.

6 Q. (BY MR. MARRS) -- prior to the 2007 summer
7 camp?

8 MR. SNYDER: Objection, form.

9 A. I don't know. I'm -- I don't know. I
10 assume we would have.

11 Q. (BY MR. MARRS) Why? Why do you assume you
12 would?

13 A. Because it's just -- it would be the
14 complete -- if it came with it, we would -- we would
15 get it.

16 Q. Because if you knew that the pediatric pads
17 were available for the AED devices you already had,
18 you would know that that would be the safe thing to
19 do, to get those, right?

20 A. Yes.

21 MR. SNYDER: Objection, form.
22 Q. (BY MR. MARRS) Are you aware of the fact
23 that pediatric pads for use with existing AEDs are
24 available for less than \$99?

25 MR. SNYDER: Objection, form.

□00030

1 A. No.
2 Q. (BY MR. MARRS) Has anyone at the Racquet
3 Club looked into getting pediatric pads at any time
4 in the last two years, to your knowledge?

5 A. Yes, sir.

6 Q. Who?

7 A. We purchased a new AED recently and we also
8 upgraded the one AED we had to get the small pads.

9 Q. And who did that?

10 A. Ordered them?

11 Q. Yes, sir.

12 A. I'm sorry, order -- Jean Northey.

13 Q. Jean Northey?

14 A. She's Stephen's -- she's Mr. Griffin's
15 secretary.

16 Q. Okay.

17 A. Or assistant.

18 Q. And do you know where she went to get the
19 pediatric pad that would work with one of the three
20 existing AED devices that you already had?

21 A. I don't. There's a -- I think there's a web
22 site.

23 Q. Okay. Do you think she went to a web site?

24 A. Yes.

25 Q. And who asked her to do that, to your

□00031

1 knowledge?

2 A. I talked to Mr. Griffin about it.

3 Q. About what?

4 A. If we -- if it was possible to upgrade the
5 one, the one we had and look into a new one, a fourth
6 one.

7 Q. Okay. Had you, as the person in charge of
8 the counselors and as a certified AED instructor,
9 ever asked anyone at the Racquet Club to upgrade your
10 three existing AED devices at any time prior to
11 John's death?

12 A. No.

13 Q. Were -- How many pediatric pads were
14 purchased, to your knowledge, to upgrade one of the

15 existing three AED devices you already had?
16 A. Two sets.
17 Q. Okay. Two sets?
18 A. Two sets for the one we upgraded, yes.
19 Q. Okay. And what kind of AED device is that
20 that was upgraded?
21 A. I'm not sure. The brand is one of the -- I
22 guess the common ones maybe.
23 Q. Okay.
24 A. I'm not sure.
25 Q. Is that AED device that was upgraded with

□00032

1 pediatric pads the same AED device as the other
2 two --
3 A. No.
4 Q. -- that you already had?
5 A. No, it wasn't.
6 Q. Okay. Could those other two AED devices
7 that you already had, you say you had three existing
8 AED devices, you upgraded one of them, what about the
9 other two of three? Is there any reason why those
10 two couldn't have also been updated or upgraded with
11 pediatric pads?
12 A. I don't think they could be. I think they
13 are too old. I think they're -- but I'm not sure. I
14 mean, maybe there is some kind of adaption, but
15 nothing we could find.
16 Q. Okay. So as we sit here today, you really
17 can't say one way or the other whether it could be
18 upgraded with pediatric pads?
19 A. Correct.
20 MR. PLETCHER: But one of the three
21 could.
22 Q. (BY MR. MARRS) Okay. So after John's
23 death, the Racquet Club looked into upgrading at
24 least one of their AED devices with pediatric pads
25 that were readily available on the web, correct?

□00033

1 A. Yes.
2 Q. And it was no problem to get pediatric pads
3 that would fit that AED device that you already had,
4 correct?
5 MR. SNYDER: Objection, form.
6 A. I'm not sure if Jean had any problems or
7 not. I --
8 Q. (BY MR. MARRS) I guess what I mean is: To

9 your knowledge, was there any problem to -- were
10 those pediatric pads, are they plugged in already
11 into the AED device ready for use?

12 A. The new ones we have?

13 Q. Yes, sir.

14 A. No, sir.

15 Q. Okay. And so that existing AED device you
16 already had that you got the pediatric pads for, when
17 it's sitting in the room ready for someone to grab
18 and use in the event of an emergency, are those pads
19 in any way connected to that machine?

20 A. No, sir.

21 Q. Okay. Wouldn't it have been the safe thing
22 to do, to already have the pediatric pad for the
23 existing AED device prior to the 2007 summer camp?

24 MR. SNYDER: Objection, form.

25 A. No, I don't think so.

□00034

1 Q. (BY MR. MARRS) Would the -- as an AED
2 instructor, the other two older AED devices, were
3 they devices that were capable of being used on a
4 child John's size?

5 A. Yes. They were capable of being used.

6 Q. Okay. So the two existing -- the three
7 existing AED devices that you had at the Racquet Club
8 on July 18th were capable of being used on
9 John Pluchinsky at the time of his drowning, correct?

10 A. Correct.

11 Q. Or any other four-year old child, to your
12 knowledge, correct?

13 A. Yes.

14 Q. And knowing about AED devices, pediatric AED
15 devices, that is part of being an AED instructor,
16 isn't it?

17 A. Yes.

18 Q. And you should have known about pediatric
19 pads and pediatric AEDs prior to your 2007 summer
20 camp, correct?

21 MR. SNYDER: Objection, form.

22 A. I don't think so.

23 Q. (BY MR. MARRS) Okay. Now, when you say
24 that you don't believe -- correct me if I'm wrong --
25 you don't believe it would have been safer to have an

□00035

1 AED device with pediatric pads on it as of the time
2 of John's incident, are you saying that because you

3 already know that the existing AED devices that you
4 already had would have been appropriate to use on
5 John?

6 MR. SNYDER: Objection, form.

7 A. Would you say that again, I'm sorry?

8 Q. (BY MR. MARRS) Sure. When you say that it
9 would not -- are you -- is it your testimony it would
10 not have been safer on July 18th, 2007 to have an AED
11 device with pediatric pads, are you saying that
12 because you know the AED devices you already had
13 would have been appropriate for use?

14 MR. SNYDER: Objection, form.

15 A. No, no. It was very safe. It was very safe
16 with or without those pads.

17 Q. (BY MR. MARRS) Okay. I -- What would have
18 been safe?

19 A. Our camp program, I guess is what you're
20 talking about.

21 Q. Okay. Okay. Is there anything else you
22 would have had to do to the existing AED devices in
23 order to use them on a four-year old?

24 MR. SNYDER: Objection, form.

25 A. As in alternating them in some way?

□00036

1 Q. (BY MR. MARRS) Correct.

2 A. No.

3 Q. Okay. They were ready to go?

4 A. Yes, sir.

5 MR. PLETCHER: Just stick them on and
6 turn it on.

7 Q. (BY MR. MARRS) And were they charged up and
8 ready to go?

9 A. Yes.

10 Q. And do you still have your AED training
11 manual and AED instructor's manual?

12 A. I just -- I just received my -- I just
13 received the new one, yes.

14 Q. And how about prior to the -- well, the new
15 one you received, 2007 or --

16 A. I'm not sure what year. I'm not sure the
17 edition.

18 Q. Whatever the newest one is?

19 A. Yeah.

20 Q. Where did you get that?

21 A. A company here in town sells them.

22 Q. And when were those requested or ordered by

23 the Racquet Club?

24 A. I talked to -- my renewal is coming up in
25 June of this year, of this summer. And I had talked

□00037

1 to Steve in the last couple of weeks and said maybe
2 I'll continue on with -- and get this renewed and so
3 went ahead and got the books.

4 Q. Okay. And how about the books you had prior
5 to that, your --

6 A. Yes. Those were probably somewhere. I
7 don't know where.

8 Q. Can you tell us when you first knew on
9 July 18, 2007 that something was wrong at your club?

10 A. I'm not sure on the exact time, shortly
11 after 911 was called.

12 Q. Well, describe the circumstance even if you
13 can't give us an exact time. What happened to make
14 you aware something was wrong at the Racquet Club?

15 A. One of the lifeguards came into my office
16 and got me.

17 Q. And who was that?

18 A. 15 y/o LG #2 .

19 Q. And what did he say?

20 A. He said, "We have an emergency at the
21 pool."

22 Q. Take it from there and just describe for me
23 what happened and -- from there.

24 A. 15 y/o LG #2 came into my office. He just
25 walked into my office and he said, "There's an

□00038

1 emergency at the pool." I --

2 MR. SNYDER: Do you want to take a
3 break?

4 THE WITNESS: No, I'm okay.

5 A. I said -- has -- I said, has 911 been called
6 as we --

7 MR. MARRS: Let's take -- Let's just
8 take a five-minute break.

9 THE WITNESS: Yeah, I'm sorry.

10 MR. MARRS: Let's go off the record.

11 VIDEOGRAPHER: Off the record. The
12 time is 11:18 a.m.

13 (Brief recess.)

14 VIDEOGRAPHER: Back on the record. The
15 time is 11:26 a.m.

16 Q. (BY MR. MARRS) Okay. Go ahead,

17 Mr. Lamkin.

18 A. Okay.

19 Q. You were telling me that 15 y/o LG #2 ran
20 in your office, said there was an emergency at the
21 pool. You asked if 911 had been called and then you
22 left your office. Please describe for us events as
23 they unfolded from there.

24 A. I went out the -- I followed 15 y/o LG #2 outside
25 the fitness door and the pool gate is right outside

□00039

1 that and we went down the stairs, which lead to the
2 lap pool. We could see -- I could see at the -- as
3 soon as I got to the steps that there was a crowd of
4 people over by the resort pool. As we -- as we got
5 closer, we ran -- we continued running. We ran
6 across and I saw that the kids were already being --
7 the counselors were already walking groups of
8 children away. The lap pool was empty. There were
9 no guards there. And there were a group of moms and
10 counselors standing around underneath the west resort
11 umbrella. As I got there, Supv CC #1 and
12 LG Supv were doing CPR. As I walked around to get
13 a -- walked around the group to get a better view,
14 one of the moms -- I'm sorry.

15 Q. It's okay. So, you saw Supv CC #1 and
16 LG Supv doing CPR and you saw some moms around there
17 as well and you walked around to get a better view
18 and one of the moms --

19 A. One of the moms said, "David, take over."

20 Q. Okay. And then what happened?

21 A. Supv CC #1, who had been doing compressions,
22 backed away.

23 Q. Okay.

24 A. And I immediately got down.

25 Q. And you immediately got down and started --

□00040

1 A. And I started doing compressions.

2 Q. Compressions?

3 A. Well, the first thing was -- I wasn't sure
4 what was going on. I had -- John had good color, so
5 I knew CPR was doing -- you could hear that -- one,
6 you could hear the ambulance on Memorial or Voss.
7 You could already hear it. And so I hoped that --
8 because I hadn't -- I had no idea what was happening,
9 so I -- I had hoped that it was an obstructed airway,
10 so I did one or two --

11 Q. Take your time. You hoped it was an
12 obstructed airway?

13 A. Obstructed airway. I did one or two
14 Heimlich maneuvers on John, on his stomach. He spit
15 up water, so that I knew it was -- and lunch, it
16 looked like whatever he had eaten.

17 Q. Uh-huh.

18 A. So I knew that it wasn't an obstructed --

19 Q. Airway?

20 A. Yeah.

21 Q. Okay. And then after --

22 A. LG Supv gave two more breaths and
23 4 y/o B-CC #1 -- I was on the north side of John or
24 the -- his left side.

25 Q. So LG Supv gave two more breaths. You

□00041

1 were on John's left side?

2 A. Yeah.

3 Q. And then what happened from there?

4 A. 4 y/o B-CC #1 was on his right. 4 y/o B-CC #3
5 was in the water hold -- holding his feet. Steve
6 gave two more breaths. 4 y/o B-CC #1 was scooping a -- had
7 scooped whatever he had had for lunch out of his
8 mouth. And I had checked -- I was checking his -- to
9 see if he had any pulse in his brachial artery.

10 Q. Did he?

11 A. No, he did not. And so I began to do
12 compressions. And I went through, I guess, about a
13 minute, three or four cycles, maybe two minutes,
14 probably -- in between a minute and three minutes.
15 Maybe not that long. And we never -- I never got a
16 pulse. So, the EMS showed up and that had their --
17 they had -- when EMS showed up, I saw Guillermo with
18 them and that's when I noticed -- I backed in to
19 Steve, I think, when I stood up when EMS got there.
20 They had the -- they had their defibrillators and
21 they started to hook John up, but they didn't. They
22 put --

23 Q. So the EMS had their own defibrillator?

24 A. They started to hook him up, but they
25 didn't. They put him on their stretcher or --

□00042

1 Q. Backboard?

2 A. Backboard, uh-huh. And -- no, it was a
3 stretcher, I think, because they stood it up, I
4 think.

5 Q. Okay.

6 A. Because I remember an oxygen tank fell off
7 and he picked it back up. I remember it clanging off
8 and...

9 Q. Okay.

10 A. They had -- and then they took him off. And
11 Mr. -- Officer Beverage was there and he started
12 gathering up the counselors -- the lifeguards and the
13 counselors, which was the eight that we -- that -- I
14 can name, if you'd like and --

15 Q. The eight counselors that were in the pool?

16 A. The six counselors and the two supervisors.
17 I'm not sure Supv CC #1 had been in the pool. I think he
18 may have been around the pool, but -- and then -- and
19 I think all the lifeguards actually. Some of -- some
20 of our counselors had taken their groups back, so
21 they weren't there, but I think -- I think it was
22 4 y/o B-CC #2 and maybe 4 y/o B-CC #4 -- No. 4 y/o B-CC #2 and --
23 4 y/o B-CC #2 and one of the others had walked the groups
24 back. And I think the girl -- four-year-old
25 counselors helped them walk them all back to camp.

□00043

1 We had -- they had already started trying to get --
2 somebody -- I think at that point I walked over to
3 the counselors who were kind of gathered.

4 Mr. Beverage -- Officer Beverage had
5 not -- had not started to interview anybody. I think
6 he may have been talking to -- I don't know --
7 Guillermo or somebody. But I went over to the
8 counselors and I said, "What happened?" And they
9 said they didn't know. So and then he came over and
10 he goes, "I need to talk to each one of them."

11 And I said, "Okay." And so some -- the
12 girls had done a -- they had the clipboard and I
13 think it was 4 y/o B-CC #4. 4 y/o B-CC #1 had had the clipboard
14 that day, but she had --

15 Q. Who had?

16 A. 4 y/o B-CC #1 --

17 Q. Okay.

18 A. -- was the assigned clipboard person. So
19 4 y/o B-CC #4 or one of them had taken -- done a check to
20 make sure all the other children were there, the
21 other 12. And then she had -- I guess one of the
22 other girls had run over there to get the number so
23 we could call John's mom. And then -- excuse me.

24 Then they came back with Alec's, that

25 was -- we handed that to another policeman, Walpole,
□00044

1 W-A-L-P-O-L-E, Officer Walpole. And he began
2 calling. And he knew that it was -- he knew that it
3 was John because we had Alec -- Alec's card. And I
4 think it came up because it was -- it was A, but I'm
5 not sure on that, but that's what I was...

6 Q. How did he know it was John?

7 A. He knew -- he knew it was John because the
8 girls, 4 y/o B-CC #4 or -- 4 y/o B-CC #4 or 4 y/o B-CC #2 had given him --
9 showed him the clipboard, so he knew that -- he --
10 that all the other children were accounted for and
11 that John was not.

12 Q. And did you see them hand the officer the
13 clipboard or did you hear that?

14 A. I saw them talking. I saw -- I read it in
15 his report, the report.

16 Q. That --

17 A. He does -- I was looking for the name of who
18 did it, but it just said that one of the girls took
19 him or showed him the clipboard. And he knew that
20 it -- that it was John and that he was holding Alec's
21 card, the older brother. And he -- I was standing
22 with him awhile. And then, I went back over to the
23 counselors to wait for the interviews. And Guillermo
24 stood with Officer Walpole while he made the calls,
25 too.

□00045

1 Q. To who?

2 A. To Ms. Pluchinsky or her -- that's the
3 number we had, I guess.

4 Q. And were you present or nearby when the
5 officer made that call?

6 A. I was for two or three of them and then I
7 had some counselors that were upset.

8 Q. And did you hear what the officer was
9 saying?

10 A. He was just leaving a message. I was with
11 him if he needed me to do anything, but I was looking
12 at my counselors and stuff.

13 Q. What was he leaving a message about?

14 A. I think his message was that John's mom
15 needed to call him. I'm not sure that -- I don't
16 know what else he said. I know he said that she
17 needed to call. There was an emergency or that he
18 needed -- she needed to call as soon as she could or

19 something like that.

20 Q. Did he say about what or about what child?

21 A. I don't think so. I don't think so, no.

22 Q. Okay. Go ahead from there. What else did
23 you observe from that point forward?

24 A. Well, then the officer separated -- I think
25 he separated everybody. He wanted to interview each

□00046

1 one of the kids, and so...

2 Q. Who was present with the officer and
3 whatever child he happened to be interviewing at the
4 time, to your knowledge? Anybody else?

5 A. I think Mr. Beverage was doing -- Officer
6 Beverage was doing the interviews. I think Guillermo
7 and Mr. Walpole were over by the gate doing the
8 calls.

9 Q. Okay. Anybody else present with
10 Mr. Beverage, Officer Beverage, any of the witnesses,
11 to your knowledge?

12 A. There were -- there were the moms that were
13 there.

14 Q. And was the officer writing notes?

15 A. Yes. He was writing a report on each one of
16 them, each one of them.

17 Q. On a pad or a spiral or what did you -- do
18 you recall?

19 A. I did not.

20 Q. Okay. So take us from that point forward
21 and what did you do? Where did you go and what did
22 you see?

23 A. Let's see. I was probably -- he started the
24 interviews probably around as soon as the ambulance
25 left, which was, I don't know, 11:30. Maybe a little

□00047

1 before 11:30 the ambulance left and that's when he
2 started. I don't know how long that took and then I
3 knew we had car pool at 12:30. And we were waiting
4 for...

5 Q. So after you saw Officer Beverage was
6 starting to take interviews --

7 A. Steve --

8 Q. -- what did you see from there?

9 A. Steve left with -- Steve left to go to the
10 hospital.

11 Q. Okay.

12 A. I don't know if anybody from the pool went

13 with him. And I just sat with a couple of the
14 counselors and lifeguards. And I don't know how long
15 I was there. We went -- I eventually took those --
16 when he finished -- I'm not sure when he finished his
17 interviews, but we all start -- all the counselors,
18 we headed over. I kept the eight with me and took
19 them -- all the kids were on the bleachers waiting
20 for a -- pick up and -- car pool pick up. And I took
21 the eight counselors back behind the camp house and
22 told them stay there. Call Steve -- I realized
23 CD had -- she had brought or had taken -- I
24 can't remember.

25 She had John's application, so she had

□00048

1 that and she left with or -- and went to the hospital
2 as well. I called Steve several times and Steve had
3 called us with -- we were trying to find out if --
4 Steve had called and we kept calling Steve and CD
5 to see if John had made it. And he, of course,
6 couldn't get information. And he called when John's
7 mom showed up at the hospital. He called me then.
8 And so then car pool had started, the pick up had
9 begun. EG (phonetic) showed up at some point, I
10 think. And he was out at the camp and I -- I have no
11 idea. I think the lifeguards all went to their
12 office. I saw 15 y/o LG #1 later in the day, I think, when
13 I asked her for a statement. I --

14 Q. Is that 15 y/o LG #1 ?

15 A. 15 y/o LG #1 , yeah.

16 Q. Okay.

17 A. I think she -- I think she stayed over there
18 with all the lifeguards. I think they stayed with
19 LG Supv .

20 Q. And was there a lawyer present with any of
21 these counselors or lifeguards at the time that they
22 were being interviewed by the police officer?

23 A. No. This was moments after the ambulance
24 had left with John.

25 Q. Okay.

□00049

1 A. So like the eight counselors, they -- we
2 kept them apart from anybody else. Still waiting on
3 John's --

4 Q. On word?

5 A. -- condition, yes.

6 Q. Okay.

7 A. And I think it was -- it was Officer
8 Walpole. I don't know, one of them. It wasn't
9 Beverage, but -- I don't think, but it was officer --
10 one of the officers.
11 Q. And so at that point in time you saw one of
12 the officers do what?
13 A. He had showed up to wait -- to wait till we
14 had heard from somebody that they had contact -- that
15 John's mom was on the way to the hospital. So,
16 someone else was going to pick up Alec. So --
17 Q. Who did pick up Alec?
18 A. I don't know. I -- the policeman was
19 waiting with Alec and I had my daughter -- I'm sorry.
20 Q. That's quite all right.
21 A. I had a --
22 Q. So you were saying that Alec was waiting
23 with the police officer?
24 A. Right, and my daughter.
25 Q. And your daughter?

□00050

1 A. Yeah.
2 Q. Okay. And then what happened with respect
3 to Alec? Do you know how he ended up being released
4 into the custody of somebody else?
5 A. No. That was the --
6 THE REPORTER: That was the what?
7 A. That was the police officer, I think.
8 Q. (BY MR. MARRS) Okay.
9 A. Yeah. The -- he knew who was coming, I
10 think. He had a name. I don't -- I don't remember.
11 I -- or he knew a neighbor or something like that.
12 Someone was coming to pick up Alec. I had asked my
13 daughter to sit with Alec. None of the others really
14 could, but he --
15 Q. Do you know how Alec ended up at some
16 third-party's house?
17 A. No, I do not. That -- the policeman took
18 custody basically of Alec.
19 Q. Without permission of either of the parents?
20 A. Yeah. We gave them the contact numbers and
21 the policeman had Alec.
22 Q. Okay.
23 A. I only sat there because Alec was by
24 himself. And so I asked my daughter to sit with
25 him --

□00051

1 Q. Sure.

2 A. -- on the steps.

3 Q. Okay. And what happened from that point
4 forward?

5 A. I think the other counselors, I finally got
6 them up there. I think all the kids had gone. At
7 some point I got a call from Steve and he had the
8 indications that maybe John didn't live. And so, I
9 went to the counselors and I told them. And then I
10 think CD showed up and she said the same, I think.

11 Q. Okay.

12 A. And I said I think -- because the officer
13 had done it, I just said, I think each of us, each of
14 you should write down where your group was, what you
15 were doing -- what you were doing at the time.

16 Q. You said that to who?

17 A. To all our -- all the counselors that were
18 left, were sitting on the bleachers.

19 Q. Okay. Was that your idea or someone else's
20 suggestion?

21 A. It was mine.

22 Q. Okay.

23 A. I saw -- I saw Officer Beverage do that and
24 so I just thought that's probably a good idea.

25 Q. Okay. And so where exactly were you and the

□00052

1 counselors at that time?

2 A. Drop-off, where the drop-off is.

3 Q. Okay.

4 A. At the camp house.

5 Q. Okay. Is that an outdoor area?

6 A. Yes.

7 Q. Where there are bleachers?

8 A. Yes.

9 Q. And how did they get the paper to write
10 their statements on?

11 A. I think CD's daughter, who is
12 arts and craft, brought them down for me.

13 Q. Okay.

14 A. Some pencils.

15 Q. And were they all kind of sitting together
16 in the bleachers writing out their statements?

17 A. Some were. They were very spread out.

18 Q. Were they asking you, "Well, what do you
19 want us to -- statement about what? What do you want
20 us to say?"

21 A. No one said a word.
22 Q. Well, how did they know?
23 A. I said, I -- when I walked out with paper, I
24 said, "Please state exactly where you were and what
25 group you were with."

□00053

1 Q. Okay.
2 A. Put what you were doing, what group you were
3 with and where you were at the time. And they all
4 just sat down and did that. CD gathered them up
5 and then we -- I took them back to my office -- I
6 guess at some point as a possible incident report or
7 something like that.

8 Q. Okay. So you were present and CD was
9 present and of course, most -- Were all the
10 counselors there?

11 A. Every counselor was accounted for then. And
12 I think Guillermo may have been there as well. He
13 had come out.

14 Q. Okay. And were you there the entire time
15 that the counselors were writing out their
16 statements?

17 A. Yes.

18 Q. And was there any talking among the
19 counselors at the time that they were writing out
20 their statements?

21 A. No.

22 Q. Any discussion among the counselors and
23 anyone else that was there during the time they were
24 writing out their statements?

25 A. No. No one -- the counselors were the only

□00054

1 ones that were there and...

2 Q. I mean, was it just pure silence or was
3 there some talking going on about --

4 A. It wasn't silent.

5 Q. -- "Where were you?" I mean, where were --

6 A. It wasn't silent.

7 Q. Okay.

8 A. It wasn't silent, but there was no talking.
9 They weren't saying, "Hey, what was your group
10 doing?" No one said anything.

11 Q. Okay. Yeah, that's kind of what I was
12 trying to find out.

13 And how about the -- what's called the
14 Supervisor's Investigative Report form that I've seen

15 filled out. Whose form is that? Do you know what
16 I'm referring to?

17 A. I should probably see one of those. I'm not
18 sure.

19 Q. This kind of form that's marked as Exhibit
20 Number 3 that 15 y/o LG #1 filled out. It says,
21 Supervisor's Investigation of Accident. Is that a
22 Racquet Club form?

23 A. Yes. That's -- yes, it is.

24 Q. Is that a form that the Racquet Club already
25 had in place in order to memorialize what happens

□00055

1 during accidents?

2 A. That would be a form that we would use if
3 someone fell in the grill or if someone got hurt in
4 the fitness center or there's an incident at the
5 tennis courts.

6 Q. Is there --

7 A. That's a standard form as far as I can tell.

8 Q. Is it a required form, as far as you know?

9 A. No, not that I know of.

10 Q. Okay. And --

11 A. I say that. Steve may -- Steve probably
12 would have asked me if we didn't do that and he may
13 very well have asked me to get that for those. I
14 don't recall.

15 Q. Okay. Yeah, that was --

16 A. Because he -- our insurance would need that.

17 Q. That was going to be my next question. Were
18 these filled out at the same time as the statements?

19 A. I don't -- I don't know.

20 Q. This one from 15 y/o LG #1 is dated
21 July 18th, the date of the incident. Do you know at
22 what point in time these were filled out by whoever
23 filled them out about that incident?

24 A. The lifeguards, I don't think I talked to.

25 It was probably Guillermo.

□00056

1 Q. Okay.

2 A. But I may have been with him. I don't
3 remember.

4 Q. Okay. So I take it, at no point in time, to
5 your knowledge, from the time John was discovered
6 floating facedown in that pool that he had a pulse;
7 is that correct?

8 A. I don't know. I just -- when I got there

9 and took his pulse during the one to three minutes
10 that I did it before EMS got there, he didn't have a
11 pulse then.

12 Q. Okay. So from the time you arrived, he
13 never had a pulse, to your knowledge, correct?

14 A. No.

15 Q. Is that correct?

16 A. He did not have a pulse when I checked it.
17 And I checked it probably while LG Supv was giving
18 breaths, except once when I helped 4 y/o B-CC #1 -- he was
19 still throwing up, so...

20 Q. Okay. To your knowledge, did Supv CC #1 or
21 LG Supv check his pulse, do you know?

22 A. Supv CC #1 may have -- I don't think -- I never
23 read anything, nor talked to LG Supv that he did.

24 Q. Okay.

25 A. But he might have. I don't know.

□00057

1 Q. Okay. So you arrived, he had no pulse. He
2 was unconscious; is that correct?

3 A. Yes.

4 Q. And did you check any of his extremities
5 yourself, his hands, his feet?

6 A. No. John had good color. I didn't -- other
7 than checking under his arm, I continued to pull his
8 arm up.

9 Q. Did you check his fingers yourself?

10 A. No.

11 Q. Did anyone, to your knowledge?

12 A. I don't know.

13 Q. Did anyone check his toes, to your
14 knowledge?

15 A. 4 y/o B-CC #3 was holding his legs. I don't know if
16 he did or not.

17 Q. Did anyone, to your knowledge, though?

18 A. I don't know.

19 Q. You don't know?

20 A. I don't know.

21 Q. And what about lips, what color?

22 A. His lips were not -- were not -- his lips
23 were not blue. They -- he was having -- he had good
24 color when I started on him and continued.

25 Q. And you say you performed Heimlichs, one or

□00058

1 two Heimlich maneuvers. Do you recall how many it
2 was?

3 A. I think it was two.

4 Q. Okay.

5 A. I think I pushed on his stomach twice.

6 Q. Okay.

7 A. To see -- and it wasn't. He -- there was no
8 obstructed airway. He threw up immediately, threw up
9 water and food.

10 Q. And that was while lying on his back?

11 A. Yeah. Heimlich for an unconscious victim is
12 what I did. Sorry.

13 Q. Let's go ahead and take our lunch break, if
14 that's okay with you. Is that okay with you,
15 Mr. Lamkin?

16 MR. SNYDER: Sure.

17 VIDEOGRAPHER: Off the record. The
18 time is 11:55 a.m.

19 (Lunch recess was taken.)

20 THE VIDEOGRAPHER: Back on the record.
21 The time 1:44 p.m.

22 Q. (BY MR. MARRS) Mr. Lamkin, you generally
23 went through the things that you observed on July 18,
24 2007. I want to go back and get more specifics on
25 some of those things. Okay?

□00059

1 A. Okay.

2 Q. Tell me specifically, when you got to where
3 John and the others were, specifically the steps that
4 you took. What's the first thing you did when you
5 got there from that point forward?

6 A. I walked around to the side where -- in
7 between LG Supv and -- LG Supv and Supv CC #1 .

8 Q. Okay.

9 A. The umbrella was here (indicating).
10 4 y/o B-CC #1 was here next to the umbrella on John's left
11 side -- right side. Parents, groups of parents or
12 whatever and counselors here (indicating). John was
13 here. 4 y/o B-CC #3 was in the water holding his feet and
14 LG Supv was at his head. Supv CC #1 was at his left
15 side. I walked around sort of in between and that's
16 when I heard whatever, "David, take over." Supv CC #1
17 backed immediately out. I just stepped right in.

18 Q. Okay. You stepped in and what is the first
19 thing you did from that point forward?

20 A. I just -- I didn't know what had happened,
21 so I just looked at him. I just looked at him.

22 Q. Okay.

23 A. His stomach was -- obviously, they had
24 done -- CPR you do get air in the stomach when you do
25 CPR. But he had swallowed or whatever -- his stomach

□00060

1 was a little -- I didn't -- I didn't know John, so it
2 may be that his tummy was big anyways. So I
3 thought -- I was hoping possibly obstructed airway.
4 So I did a couple of presses to his stomach, water
5 came out, so...

6 Q. Okay. Now, so when you got there you saw
7 that his stomach was out a little?

8 A. Right.

9 Q. And you say you hoped that he had an
10 obstructed airway. What do you mean by that?

11 A. Choking, he had choked.

12 Q. Okay. And you hoped that that's what the
13 problem was, why? Versus what?

14 A. Well, it just makes CPR easier. I mean, if
15 you have got some -- you have to keep -- you have to
16 go from compressions or Heimlich -- Heimlich for an
17 unconscious victim and try to get air back in, so I
18 just started -- I just started right there.

19 Q. Okay. Now, when you walked up and you hoped
20 that the problem was an obstruction, in other words,
21 choking versus -- versus what?

22 A. Anything else. I didn't --

23 Q. Okay.

24 A. I had no idea. I didn't know if he had a
25 stroke. I didn't know if he had a heart attack. I

□00061

1 didn't know if he had drowned. I didn't know
2 anything.

3 Q. Okay. You had hoped that it was a choking
4 versus drowning?

5 A. Right.

6 Q. And --

7 A. Or anything.

8 Q. Okay.

9 A. Or anything.

10 Q. Okay. That's what I was trying to
11 understand why because to the jury who's not as
12 educated as you are on CPR and AED and all that, why
13 is it better that it be a choking incident versus a
14 drowning or something else?

15 A. Well, the first thing you do is try to open
16 an airway when you do CPR. And so if John had

17 choked, all LG Supv was doing would be just
18 frustrating. It would just be trying to blow and
19 Supv CC #1 would do that and so I just had hoped.

20 Q. Okay.

21 A. And that's why.

22 Q. Now, so then you started -- you did you said
23 twice Heimlich maneuver. Do you mean abdominal
24 thrusts?

25 A. Yes.

□00062

1 Q. Okay. So when you get there and you see the
2 situation and then you immediately did an abdominal
3 thrust; is that correct?

4 A. A couple of those.

5 Q. And tell me what that -- tell the jury what
6 that's like. I mean, you -- where do you put your
7 hands and what do you do?

8 A. Well, on John I just used one hand. I used
9 my left hand and got down on my knees and I just --

10 Q. Did you use your palm?

11 A. Yes, just my palm.

12 Q. Okay. Show me how you did it.

13 A. Pressed up like that (indicating). I
14 pressed. I'm sorry. Pressed up like that
15 (indicating).

16 Q. Okay. So you thrust upward on the
17 stomach --

18 A. Right.

19 Q. -- to try to get what?

20 A. Build up pressure in here to push out
21 anything that might be stuck in his throat.

22 Q. Okay. And when you immediately walked up,
23 was John breathing?

24 A. No.

25 Q. How do you know that?

□00063

1 A. Because Supv CC #1 was doing compressions.

2 Q. Okay. Did you check John's breathing first
3 or did you immediately start doing abdominal thrusts?

4 A. I did two abdominal thrusts before I did
5 anything.

6 Q. Okay.

7 A. I think 4 y/o B-CC #1, who did it several
8 times, was -- had her hands on his neck, on the right
9 side of his neck.

10 Q. Okay. Did anyone while you were there check

11 to see whether he was breathing?
12 A. No. I -- check to see if he was breathing?
13 Q. Yes, sir.
14 A. No. No one checked. John wasn't
15 breathing. There was no movement in his chest at
16 all.
17 Q. Okay. You didn't -- well, were you watching
18 his chest?
19 A. Absolutely.
20 Q. Okay. So can you be breathing even if your
21 chest is not moving sometimes?
22 A. Possibly.
23 Q. Okay. So that's why I'm asking.
24 A. Yeah.
25 Q. Did anybody get down, to your knowledge -- I

□00064

1 take it not -- and check to see if he was breathing?
2 A. Not after -- not after I got there.
3 Q. Okay.
4 A. They -- That's how you would start CPR,
5 look, listen, feel. So, they may have done it.
6 Q. Okay. But you're not sure?
7 A. I'm not sure.
8 Q. Was he in full cardiac arrest when you got
9 to him?
10 MR. SNYDER: Objection, form.
11 A. I don't know.
12 Q. (BY MR. MARRS) Okay. At what point in
13 time, if at all, did someone check his pulse while
14 you were there?
15 A. I checked it when LG Supv would breathe, which
16 was four or five times during my time with John, and
17 4 y/o B-CC #1 probably was checking on his side --
18 when John -- when LG Supv would breathe.
19 Q. Carotid, where was it checked?
20 A. I checked here (indicating). She was
21 checking here (indicating).
22 Q. Okay.
23 A. And she didn't check every time either.
24 Q. But when you checked, you say here, what do
25 you mean?

□00065

1 A. Brachial artery right here (indicating).
2 Q. Okay. To the side of the bicep?
3 A. Yes.
4 Q. On what side?

5 A. The inside.
6 Q. On which arm?
7 A. This arm (indicating).
8 Q. His left?
9 A. I was on his left side, yes.
10 Q. Okay. And who else did, in your presence?
11 A. 4 y/o B-CC #1 .
12 Q. Okay. Where was she checking?
13 A. She was checking his neck.
14 Q. Okay. Which side, do you recall?
15 A. She was on the right side of him.
16 Q. Okay. Why did the mom ask you to take over
17 doing CPR?
18 A. I have no idea. I don't know.
19 Q. Do you have any idea?
20 A. No, I don't. Possibly because she knew me,
21 but I have no idea whatsoever.
22 Q. Okay. And so, back to where we were. You
23 did your first abdominal thrust and you say there was
24 vomiting from that?
25 A. Yes.

□00066

1 Q. And then what happened specifically? What
2 was the next --
3 A. 4 y/o B-CC #1 cleaned out his mouth and
4 LG Supv gave two more breaths.
5 Q. Was he turned over?
6 A. We turned him on his side.
7 Q. Turn him on his side?
8 A. Yeah.
9 Q. To clean out his mouth. Then back on his
10 back?
11 A. Right.
12 Q. And then what?
13 A. LG Supv gave two more breaths and then
14 I started compressions.
15 Q. Okay. And how many compressions did you
16 give?
17 A. We gave -- it was 30 to 2 for five or six
18 cycles.
19 Q. Okay. So -- And who was doing the
20 breathing, LG Supv ?
21 A. Yeah. LG Supv was at his head.
22 Q. You say he gave him a couple breaths and
23 then you did 30 compressions and then what?
24 A. And then we just did that for about four to

25 six times. I'm not sure how many times.

□00067

1 Q. 30 compressions two breaths. How many
2 cycles you think?

3 A. Probably four to six.

4 Q. Okay. And then what?

5 A. The EMS was standing beside us.

6 Q. During the time you were with John, did you
7 think to get an AED device or were you too busy doing
8 what you were doing?

9 A. I did not think about that until I saw the
10 EMS come up with their -- with their defibrillator
11 and then it came to me and then...

12 Q. What came to you?

13 A. I looked to see if they had a defibrillator
14 out there.

15 Q. Okay. Did anyone mention anything at any
16 time while you were there by John about an AED
17 device?

18 A. No.

19 Q. Had you ever used an AED device before?

20 A. No.

21 Q. Have you ever given CPR prior to July 18 --

22 A. No.

23 Q. -- on John, to any person?

24 A. No, I haven't.

25 Q. Had LG Supv , to your knowledge?

□00068

1 A. I don't know.

2 Q. Had Supv CC #1 , to your knowledge?

3 A. I don't know.

4 Q. Had 4 y/o B-CC #1 , to your knowledge?

5 A. I don't know.

6 Q. Where were the AED devices stored at the
7 Houston Racquet Club on July 18, 2007?

8 A. We had one at the pro shop near the tennis
9 courts.

10 Q. How far away from the family pool was that?

11 A. 100 yards maybe.

12 Q. Okay. Where was the second one?

13 A. The second one was in the fitness building.

14 Q. How far away from the family pool?

15 A. Probably about 100 feet.

16 Q. And where was the third one?

17 A. The third one we had at the camp house.

18 Q. How far away from the family pool?

19 A. Several hundred yards.
20 Q. So the closest one was at the fitness
21 building?
22 A. Yes.
23 Q. Okay. And why didn't a counselor present at
24 the family pool at the time of the incident run and
25 get an AED device?

□00069

1 A. I don't know.
2 Q. Had you ever told any of the counselors that
3 in the event of a drowning or a near drowning in the
4 pool to immediately go get an AED device?
5 A. During training if I had -- no, not
6 counselors as a whole. I did certify many of those
7 counselors -- I don't know if those are the ones --
8 but in that, if they took my course at the club then
9 we would have told them where the defibrillators were
10 and to at least -- do not stop CPR for any reason,
11 but if there's someone available, then the protocol
12 or procedure would be, "Hey, you, in the gray shirt,
13 go call 911 and bring -- see if you can find -- see
14 if you can get a defibrillator."
15 Q. So appropriate training dictates that if
16 there's more than one rescuer or more than one person
17 available, then someone should immediately get an AED
18 device, correct?
19 A. When we -- that's the way that American
20 Heart Association teaches it.
21 Q. And that's proper protocol and training for
22 rescues, correct?
23 A. At least for American Heart Association.
24 Q. That's the way it should be done, correct?
25 A. Yeah. If you've got somebody, if you know

□00070

1 where they are and you're not going to have to
2 explain, take any time away from your CPR,
3 definitely.
4 Q. Okay. And every single counselor that
5 worked at the Houston Racquet Club certainly should
6 have known that A, the Racquet Club had AED devices,
7 correct?
8 MR. SNYDER: Objection, form.
9 A. Yes.
10 Q. (BY MR. MARRS) Including the lifeguards,
11 correct?
12 MR. SNYDER: Objection, form.

13 A. Correct. I would think so. I'm not sure.

14 I didn't -- I didn't train the lifeguards.

15 Q. (BY MR. MARRS) Okay. But you know because
16 you're a CPR trainer and an AED trainer that
17 lifeguards should also know whether or not the
18 facility they are working at as a lifeguard should
19 have an AED device; don't you agree with that? They
20 should know that?

21 MR. SNYDER: Objection, form.

22 A. I would think so.

23 Q. (BY MR. MARRS) And they -- lifeguards and
24 counselors should know and should be trained on
25 exactly where the AED devices are at the Racquet

□00071

1 Club. Do you agree with that?

2 MR. SNYDER: Objection, form.

3 A. Not so much the counselors, especially at a
4 pool -- I mean, I wouldn't -- counselors would be
5 secondary responders at best at a pool. That's the
6 lifeguards' responsibility. And they certainly knew
7 that -- where the defibrillator was at their -- at
8 the camp house, or the ones that we had worked with.

9 Q. (BY MR. MARRS) Your counselors at the
10 Racquet Club were not responsible for guarding
11 children in the pool other than campers assigned to
12 counselors, correct?

13 A. Correct.

14 Q. They were not responsible for watching
15 guests or members or anyone else in the pool other
16 than the campers that have signed up for summer camp,
17 correct?

18 A. Each group of counselors to a specific --
19 the specific group of children they are with.

20 Q. Correct. Okay.

21 A. And that by no means, means if a counselor
22 saw another child in distress or whatever, they would
23 go, "Not my group." They would --

24 Q. But that was not their assigned
25 responsibility to watch anyone in the pool other than

□00072

1 the specific campers assigned to them, correct?

2 A. Yes.

3 Q. Correct?

4 A. Correct.

5 Q. Just so she can hear it.

6 A. Sorry.

7 Q. Okay. Now, back to AEDs. Are your
8 campers -- excuse me, strike that.

9 Are your counselors that are
10 responsible for watching children in the summer camp
11 in the pools, are they required to be CPR certified?

12 A. Those are one of the changes I asked for
13 when we got started. I don't know that I put that in
14 writing anywhere except possibly maybe we try -- we
15 ask every one of them. But if I get somebody late in
16 the season or something, they may not be or if -- the
17 arts and crafts lady, she may not be. But counselors
18 that work with kids, we try to get every one of them
19 CPR certified. That's why that I got the
20 certification so that I could help that out because
21 even in our interviews, we say, "You don't have to
22 take it through ours, but we would like you to have
23 CPR when you start."

24 Q. So is that a rule of the Racquet Club that
25 if you're going to be a counselor in our pools

□00073

1 protecting children, you have to be CPR certified?

2 A. I would say, yes.

3 Q. And that rule was in effect prior to the
4 2007 summer camp?

5 A. Yes.

6 Q. And do they also have to be AED certified?

7 MR. SNYDER: Objection, form.

8 Q. (BY MR. MARRS) Is that a rule?

9 A. No. No, it's not, but if they have it with
10 the American Heart Association, that's part of the
11 certification, so...

12 Q. Okay. Back to AEDs. Now, certainly you
13 were responsible for training the counselors that
14 worked at the 2007 summer camp, correct?

15 A. Yes.

16 Q. Okay. And you trained your counselors with
17 respect to the location of the AEDs at the Houston
18 Racquet Club, didn't you?

19 A. Certainly, if they took my class, if they
20 were one of the people that I certified, I would have
21 to think back on our training the day that we -- our
22 orientation where we kind of do a training, whether I
23 had mentioned where the other two were in addition to
24 the one at the camp house. They would have -- they
25 would have allowed the lifeguards to handle any

□00074

1 situation at the pool.

2 Q. Do you believe that it is important that the
3 camp counselors, who are in the pool with young
4 children, know where AED devices are so that they
5 could go get them in the event there is a drowning or
6 near drowning in your pool?

7 MR. SNYDER: Objection, form.

8 A. Not necessarily.

9 Q. (BY MR. MARRS) Well, if there's not another
10 lifeguard available to get an AED, but there is a
11 counselor available, but the counselor doesn't even
12 know where the AED device is, how is it that the
13 counselor, who is the only other available person
14 going to get an AED device?

15 A. Well, I really --

16 MR. SNYDER: Objection, form.

17 A. I can't think of a situation that that would
18 happen. There would never just be one lifeguard at a
19 pool when we had children and counselors there,
20 campers and counselors.

21 Q. (BY MR. MARRS) Okay. You can't think of --
22 okay. So in this situation with John, there were two
23 15-year old lifeguards, correct?

24 A. Yes. At least two.

25 Q. Okay. And was 15 y/o LG #1 doing CPR on

□00075

1 John?

2 A. No.

3 Q. Why not?

4 MR. SNYDER: Objection, form.

5 A. I don't know. LG Supv was --

6 LG Supv and Supv CC #1 .

7 Q. (BY MR. MARRS) So why didn't 15 y/o LG #1
8 go get an AED device? She was a lifeguard. She was
9 expected to know where it was, correct?

10 MR. SNYDER: Objection, form.

11 Q. (BY MR. MARRS) Wouldn't you imagine she
12 should know where an AED device is as a lifeguard at
13 one of your pools?

14 MR. SNYDER: Objection, form.

15 A. I would assume she would.

16 Q. (BY MR. MARRS) Okay. Why didn't 15 y/o LG #1
17 go get an AED device immediately when other
18 rescuers were working on John Pluchinsky?

19 A. I don't know.

20 Q. Why didn't 15 y/o LG #2, also a lifeguard

21 at the pool at the time do CPR on John?

22 A. I don't know.

23 Q. Okay. If he was not doing CPR on John, why

24 is it that 15 y/o LG #2 did not go and get an AED

25 device immediately?

□00076

1 A. I don't know.

2 Q. You would expect that 15 y/o LG #2, as a
3 lifeguard at Houston Racquet Club to know exactly
4 where the AED devices were, don't you?

5 MR. SNYDER: Objection, form.

6 A. Yes. I would hope so.

7 Q. (BY MR. MARRS) You would think he would be
8 expected to, correct?

9 MR. SNYDER: Objection, form.

10 A. I would -- yeah, I would hope so.

11 Q. (BY MR. MARRS) If he was properly trained,
12 he should know exactly where the AED devices are,
13 correct, as a lifeguard at your club?

14 MR. SNYDER: Objection, form.

15 Q. (BY MR. MARRS) Correct?

16 A. Yes.

17 Q. After John's death, are you as a person
18 still in charge of summer camps, if you have one, are
19 you going to make sure that all counselors are fully
20 aware of where your AED devices are?

21 MR. SNYDER: Objection, form.

22 A. I haven't been told I'm in charge of summer
23 camps.

24 Q. (BY MR. MARRS) If you are, will you make
25 sure that all your counselors are fully aware of

□00077

1 where your AED devices are?

2 MR. SNYDER: Objection, form.

3 A. I'm -- I don't even know if I'm going to be
4 in charge.

5 Q. (BY MR. MARRS) If you are in charge, would
6 you make sure or not? Have you even thought of that?

7 MR. SNYDER: Objection, form.

8 A. I really haven't. I don't know how -- I
9 would have to wait and see if that's my job.

10 Q. (BY MR. MARRS) Okay. As someone who has
11 been in charge of the Houston Racquet Club summer
12 camp, do you think it is a good safety standard for
13 all counselors to also know where all the AED devices
14 are in your club facility?

15 MR. SNYDER: Objection, form.

16 A. Not necessarily.

17 Q. (BY MR. MARRS) Why?

18 A. They wouldn't -- they wouldn't need to --
19 they wouldn't ever have access to them. The one at
20 the tennis courts, I -- I just don't think so.

21 Q. Well, how about the one 100 feet away in the
22 fitness building?

23 A. I would expect the lifeguards, which is --
24 the pool is there.

25 Q. And what if the -- what if you -- you know

□00078

1 for a fact that there are oftentimes when there are
2 only two lifeguards at that family pool, correct?

3 A. That's correct.

4 Q. And what if there is an incident at that
5 family pool and both of those lifeguards are doing
6 two-person CPR and there is a counselor there also,
7 who is going to get the AED? It's not going to be
8 the two lifeguards if they are doing CPR. It's got
9 to be that third person. Isn't that a situation
10 where possibly you might need the counselor to go get
11 an AED device?

12 A. Not --

13 MR. SNYDER: Objection, form.

14 A. -- necessarily.

15 Q. (BY MR. MARRS) Okay. Tell me why that's
16 wrong.

17 A. Because if there was an emergency, the
18 lifeguards would -- we would never just have two
19 lifeguards at our pool, whether it was one pool or
20 both pools or whatever. The lifeguard procedure, I
21 guess, and Guillermo is the -- more of an expert on
22 that, but there would be whistle blasts to indicate
23 that all of the lifeguards respond to the emergency,
24 not a counselor. A counselor wouldn't be trained to
25 respond to a pool-side emergency like that.

□00079

1 Q. More knowledge about safety is always better
2 than less knowledge about safety, isn't it?

3 A. I suppose so, yes.

4 Q. The bottom line is: It's safer that
5 everyone know where the AED devices are, isn't that
6 true?

7 A. Not necessarily.

8 Q. Do you think it's important for your members

9 to know where your club keeps your AED devices?

10 MR. SNYDER: Objection, form.

11 A. Possibly.

12 Q. (BY MR. MARRS) Why? For safety reasons?

13 A. No, not safety reasons. I think if -- well,

14 I don't know if you call it safe -- if someone is out

15 at the back tennis courts or something and I guess if

16 for whatever -- I don't know that -- I would have

17 to -- possibly -- possibly it's important for the

18 members to know, but I don't know. I don't know that

19 a member would ever have a need to use one. There's

20 so many staff members that would use it, I think.

21 Q. The more people that know about where a

22 safety device is, the better; isn't that common sense

23 to you?

24 MR. SNYDER: Objection, form.

25 A. I don't know.

□00080

1 Q. (BY MR. MARRS) I mean, if safety is the

2 Number 1 priority at the Houston Racquet Club, not

3 just a minimum standard or oh, we hope someone is

4 available that might know how to use this thing or

5 might know where it is, but if safety is the Number 1

6 priority, you want to make sure that all of your

7 employees at your Racquet Club know exactly where

8 your AED devices are; isn't that true?

9 MR. SNYDER: Objection, form.

10 A. I don't know.

11 Q. (BY MR. MARRS) Well, you don't know one way

12 or the other?

13 A. No. I really don't know if it's important

14 for every employee to know where the AED devices are.

15 Q. Whether or not it's important to you,

16 certainly it's the safest thing than just to have a

17 few or just your lifeguards know, isn't it?

18 MR. SNYDER: Objection, form.

19 Q. (BY MR. MARRS) It's safer that all

20 employees know where your AED device is, so that if

21 someone has a heart attack, if a member falls down,

22 is in cardiac arrest, there's a near drowning,

23 whatever it is, that someone can grab the AED device

24 and take it to whatever location that might be

25 needed, so that whoever does know how to use it can

□00081

1 use it, correct?

2 MR. SNYDER: Objection, form.

3 A. I'm not sure.
4 Q. (BY MR. MARRS) You're not sure about what?
5 A. I'm not sure that that would be the safest.
6 I don't think that would make it any safer than the
7 supervisors knowing about it and lifeguards out at
8 the pool.
9 Q. So, you disagree with that statement?
10 A. Yes.
11 Q. Do you have an AED device at your house?
12 A. No, sir.
13 Q. Is that what you teach your students when
14 you are teaching them about AEDs, that you're not
15 really sure if it matters that you use an AED device
16 or that you know where it is, but I have to just tell
17 you about them anyway as part of the certification?
18 Do you tell them that?
19 MR. SNYDER: Objection, form.
20 A. In my class?
21 Q. Yes, sir.
22 MR. SNYDER: Objection, form.
23 A. No. We just teach them how to use it.
24 Q. (BY MR. MARRS) It's a very, very important
25 life saving device, isn't it, sir?

□00082

1 A. I think so.
2 Q. It can save the life of an individual that
3 is in cardiac arrest, can't it?
4 A. Yes.
5 Q. And if you -- if you use it properly, it
6 increases the chance of survival among cardiac arrest
7 victims, correct?
8 MR. SNYDER: Objection, form.
9 A. I don't -- I don't know. I don't know.
10 Q. (BY MR. MARRS) You don't know?
11 A. I don't know. I don't know what the
12 percentage is on that.
13 Q. Well, what does the American Red Cross say
14 about that?
15 A. I would have to look through the book, but I
16 don't think they give a percentage at all on it.
17 Q. I'm not talking about percentages. I'm
18 simply saying that using an AED promptly certainly
19 increases the chance of survival for a cardiac
20 victim, isn't that true?
21 MR. SNYDER: Objection, form.
22 Q. (BY MR. MARRS) Or do you disagree with

23 that?

24 A. I disagree.

25 Q. Okay. Well, an AED device should be used as

□00083

1 soon as one becomes available. Do you agree with

2 that or not?

3 A. I do.

4 Q. Let's look and see what the American Red

5 Cross says about AEDs. Let's look at Exhibit 45C.

6 And here in the American Red Cross manual, when it

7 says, "Using an AED promptly increases a chance of

8 survival among cardiac arrest victims," you disagree

9 with the American Red Cross, don't you, because you

10 disagreed with that statement?

11 MR. SNYDER: Objection, form. This is

12 the --

13 Q. (BY MR. MARRS) Correct?

14 MR. SNYDER: Objection, form. It's the

15 lifeguard manual, the CPR manual?

16 A. I've never studied -- I've never seen the

17 Red Cross.

18 Q. (BY MR. MARRS) But you disagree with that

19 statement, though because you just did a few minutes

20 ago, right?

21 A. In terms of less --

22 MR. SNYDER: Objection, form.

23 A. In terms of running around looking for an

24 AED instead of doing CPR, I guess -- I would -- I

25 would start CPR. That's what I would do promptly.

□00084

1 Q. (BY MR. MARRS) Well, like you -- as you

2 said, there would never be a circumstance where you

3 would have to stop doing CPR and get an AED because

4 there are always plenty of people around the Racquet

5 Club, plenty of staff, plenty of counselors, plenty

6 of lifeguards, so -- and we were talking about when

7 one or two people are doing CPR and someone is

8 available to go get an AED, like a counselor,

9 although we know that now, even a counselor would not

10 be able to get the AED because you don't tell them

11 where they are. So my question is: Did you use an

12 AED device as soon as one became available for John?

13 A. We didn't use a -- there wasn't an AED used

14 on John.

15 Q. So your answer would be no?

16 MR. SNYDER: Objection, form.

17 A. I guess when EMS showed up, they had the
18 first AED on -- to John and they didn't use it. They
19 decided not to use it for whatever --

20 Q. (BY MR. MARRS) Uh-huh. Well, let's back up
21 on that. Because you already testified an AED device
22 was available, actually there were three available in
23 different locations in the club, correct?

24 A. Yes.

25 Q. The split second that the first person

□00085

1 discovered John floating in the water, there was
2 already an AED device available at the club, correct?

3 A. Yes.

4 Q. There were three available in different
5 locations at that very incident, correct?

6 A. Yes.

7 Q. So my question is: Did you or anyone else
8 at the Racquet Club use an AED device as soon as one
9 became available?

10 MR. SNYDER: Objection, form.

11 Q. (BY MR. MARRS) There were three available,
12 but no one used any of them, correct?

13 A. Yes. No one used the AED on John.

14 Q. Okay. They were available at the club, but
15 they were not used, correct?

16 A. Correct.

17 Q. And to clarify, no one at the scene before
18 the EMS got there, no one suggested, directed or
19 advised anyone to get an AED device, correct?

20 MR. SNYDER: Objection, form.

21 A. Not to my knowledge. I wasn't there till
22 the last couple of minutes.

23 Q. (BY MR. MARRS) But not to your knowledge,
24 correct?

25 A. Right.

□00086

1 Q. And no one, to your knowledge, went off to
2 get one, correct?

3 A. I don't know.

4 Q. No one that you know of?

5 A. Right.

6 Q. Correct?

7 A. Yes.

8 Q. Okay. Getting back to where we were. So,
9 after the first abdominal thrust and vomit and you
10 turn him on the side, and I think you said that

11 4 y/o B-CC #1 assisted to clean his mouth out, turn
12 him back on his back and you did a second abdominal
13 thrust then, correct?

14 A. No. We -- LG Supv did -- LG Supv , who
15 was doing the breathing, did two more breaths and I
16 did -- started compressions.

17 Q. When did you do the second abdominal thrust?

18 A. We did two -- I think I did two right at the
19 first before we did anything.

20 Q. Two?

21 A. Before I did anything.

22 Q. Meaning consecutively --

23 A. Yes.

24 Q. -- at the same time?

25 A. Right.

□00087

1 Q. Okay. One after the other?

2 A. Right.

3 Q. Who's responsible for maintaining your AED
4 devices?

5 A. I would probably be the one that --
6 eventually -- an AED device has a signal when the
7 battery begins to get weak and whoever is working at
8 that location would contact me and I would call
9 Jean Northey and ask her to order us some new
10 batteries.

11 Q. And when did that last occur, to your
12 knowledge, that the battery went down and had to be
13 replaced on any of the three AED devices that you
14 had?

15 A. I'm not sure on a date. We usually do that
16 yearly, whether they need them or not. I'm not sure
17 of the exact day, but within the last year except for
18 the -- yeah.

19 Q. Except what?

20 A. Except the newer one hasn't -- we haven't
21 done anything with that.

22 Q. The newer one has not lost its power yet?

23 A. Right. We just got that.

24 Q. Now, why did you get pediatric pads for your
25 AED device that you already had after John's death,

□00088

1 but not before?

2 MR. SNYDER: Objection, form.

3 A. I didn't know that we could. I didn't know
4 that they were available or --

5 Q. (BY MR. MARRS) Go ahead, I'm sorry. Or
6 what?

7 A. Yeah, I didn't know that they were
8 available.

9 Q. Did you know before John's death that the
10 AED devices, the three that you already had, did not
11 already have pediatric pads?

12 A. No, I didn't know that.

13 Q. You were not aware of that?

14 A. They were just the pads that came with the
15 defibrillators.

16 Q. Okay. And before John's death, you didn't
17 know if they were appropriate for just adults, just
18 kids or what, correct?

19 A. Right. They are appropriate -- I mean, you
20 would use them on anybody. You would use them on any
21 person.

22 Q. Okay. And were the pads that were with the
23 three AED devices you already had before John's death
24 appropriate for four-year olds?

25 A. They make better pads now. They make pads

□00089

1 for poundage and stuff like that, but before that, it
2 was -- there was -- there was not.

3 Q. Okay. So, the pads that existed with the
4 AED devices that you already had prior to John's
5 death would have worked okay on a four-year old; is
6 that what you mean?

7 MR. SNYDER: Objection, form.

8 A. I don't know.

9 Q. (BY MR. MARRS) Okay. So prior to John's
10 death, you were not aware of whether or not the pads
11 with the three AED devices you already had were
12 appropriate for four-year olds? You didn't know one
13 way or the other?

14 A. Right. We just -- I assume they were okay.
15 We would use them for anybody.

16 Q. Okay. How -- When you're teaching your
17 students about AEDs, how is one to know when using an
18 AED is appropriate or not in a given circumstance?

19 A. When we're teaching this, the format would
20 be, as I said a little bit earlier, look, listen and
21 feel. If you don't find those things, assign someone
22 to call 911 and if there's an AED available, to go
23 get it.

24 Q. And look, listen and feel and if you don't

25 find any of those things, what things?

□00090

1 A. If you're -- say your victim, you would --
2 you would look to see if you see any rise in his
3 chest, you would listen -- you would put your ear to
4 his -- to his mouth and listen to see if you can hear
5 wheezing or any -- or feel any breath from his nose
6 or mouth.

7 Q. Okay. And I think as you already said, you
8 may have looked for chest rising, but you personally
9 didn't listen or feel for breathing, correct?

10 A. No, I did not.

11 Q. Is that correct?

12 A. Yes.

13 Q. And no one else listened for breathing while
14 you were in the presence of John, correct?

15 A. No.

16 Q. Is that correct?

17 A. That's correct.

18 Q. And when you said before that he had good
19 color, is that when you first got there to the scene?

20 A. Yes, his body color.

21 Q. And can you tell me what you mean by that?

22 A. Pink. Pink. It wasn't turning bluish.

23 Q. What about lips?

24 A. When I first got there, LG Supv had the
25 mask over his lips.

□00091

1 Q. And you believed upon looking at the chest
2 and seeing the CPR being done, that there was no
3 breathing, correct?

4 A. Right.

5 Q. And you saw 4 y/o B-CC #1 check his pulse and you
6 believe there was no pulse, correct?

7 A. There was no pulse when I checked it.

8 Q. Okay. And no pulse and no breathing means
9 certainly no circulation, correct?

10 A. Right.

11 Q. And circulation is what gives you the pink
12 color in your skin?

13 A. Right.

14 Q. And you know he didn't have breathing or
15 pulse, so how is it that he had good color?

16 A. CPR was working. They were getting air and
17 then they were also doing the compressions that
18 were...

19 Q. And you say CPR was working. What do you
20 mean by "working"?
21 A. Circulating his blood, oxygenated blood.
22 Q. And you know that why?
23 A. Because he had a pinkish color.
24 Q. Which by no means, means that someone is
25 going to survive, correct?
□00092

1 A. That's correct.
2 Q. And by no means does it mean that they are
3 surviving at that time, correct?
4 A. Correct.
5 Q. Okay. Now, when you realized that there was
6 no breathing and no pulse, was it then your
7 conclusion that he was in cardiac arrest?
8 A. Yes.
9 Q. Was he in full cardiac arrest?
10 A. I don't know.
11 Q. How can you tell?
12 A. You would probably have to be a doctor, I
13 guess.
14 Q. Okay. And unlike CPR, an AED device does
15 what for the victim?
16 A. It gives him a shock to get their heart
17 started or back into -- yeah, heart started, back
18 into a rhythm.
19 Q. In other words, it can pull that victim out
20 of the cardiac arrest, correct, by starting their
21 heart?
22 A. Yeah, I suppose -- I suppose so.
23 Q. Are the AED devices today, the three that we
24 already talked about in the same location today as
25 they were on July 18th, 2007?

□00093
1 A. We -- the pro shop.
2 Q. Yes, sir.
3 A. The main building are still in the same
4 location. We purchased a new one and put that in the
5 pool office. And our old one that we -- that I had
6 at the camp is in the main building, the big
7 building.
8 Q. So is the new pediatric AED located in your
9 pool office?
10 A. Yes, the new one we bought.
11 Q. And how far away from your fitness -- excuse
12 me -- your family pool is that?

13 A. About 50 feet.

14 Q. How far away is your main building from the
15 family pool?

16 A. From the family pool?

17 Q. Yes, sir.

18 A. 30 feet.

19 Q. So today, we know that an AED device is
20 available for children who may be drowning victims at
21 your family pool much closer than they were on the
22 day of John's death, correct?

23 MR. SNYDER: Objection, form.

24 A. Same location -- well...

25 Q. (BY MR. MARRS) Because previously the

□00094

1 closest one you had was 100 feet away in your fitness
2 building, but today you have one available in your
3 pool office, which is about half the distance,
4 correct?

5 A. Yes. That's true, yes.

6 Q. So your closest one to the family pool for
7 children who may be victims of drowning is twice as
8 close as it was on the day of John's death, correct?

9 A. Yes.

10 Q. Approximately; is that correct?

11 A. I'm not sure on those feet, but it's about
12 that.

13 Q. Do you check the swimming ability of
14 four-year old children for the 2007 summer camp prior
15 to allowing them in your family pool?

16 A. No.

17 Q. Did the Racquet Club check the swimming
18 ability of any of the four-year old boys or girls in
19 the 2007 summer camp prior to letting them in your
20 family pool?

21 A. How do you mean check -- now, I'm sorry,
22 what were the first part of that? Check the swimming
23 or --

24 Q. Swimming ability of four-year old children
25 prior to allowing them in your family pool at 2007

□00095

1 summer camp?

2 A. Our first two weeks are -- we do a, what we
3 do a swim certification. But that's not a swim
4 lesson. It's more like -- it's just a little -- we
5 give the kids little certificates if, you know -- we
6 start off, can they blow bubbles, kick feet, things

7 like that, just a little checklist of stuff.

8 Basically, it's for the counselors to work -- to have
9 a sense of working with children in the water because
10 our counselors are required to be in the water if the
11 children are in the water.

12 Q. Okay. So my question is: During week five
13 when John Pluchinsky was in your 2007 summer camp,
14 did any counselor, lifeguard or anyone else at the
15 Racquet Club give -- check his swimming ability at
16 any time during 2007 summer camp?

17 A. I don't know.

18 Q. You don't know of any instance when that was
19 done, correct?

20 A. Right.

21 Q. And what did the Racquet Club do to group
22 the four-year olds according to their swim --
23 different swimming abilities?

24 MR. SNYDER: Objection, form.

25 Q. (BY MR. MARRS) If anything?

□00096

1 A. Nothing.

2 Q. And you know nothing because in order to do
3 that you have to check their swimming ability first,
4 correct?

5 A. And I wasn't really a counselor with that
6 group, so I don't know what they would have done when
7 they were -- you know, when they were at the pool
8 with John on Tuesday. That would be more a question
9 for the counselors, I guess.

10 Q. Sure. But, I mean, you're the guy in charge
11 of the counselors, aren't you?

12 A. Right.

13 Q. So do you -- Did you instruct your
14 counselors participating as counselors on July 18th,
15 2007 to check the swimming abilities of each of the
16 four-year old children that were going to be in the
17 family pool?

18 A. No.

19 Q. Or John Pluchinsky?

20 A. Not -- did I instruct them to?

21 Q. Yes, sir.

22 A. No. No, I did not.

23 Q. And, to your knowledge, they did not,
24 correct?

25 A. I have no knowledge whether they did or not.

□00097

1 Q. And to your knowledge, they did not group
2 the children according to swimming ability, correct?

3 A. I have no knowledge whether they did or not.

4 Q. Okay. And you never instructed them to,
5 correct?

6 A. No, I did not.

7 Q. And CD never instructed them to,
8 to your knowledge, correct?

9 A. I don't know what CD told them.

10 Q. Well, you are CD 's boss, aren't you?

11 A. Right.

12 Q. And you never instructed her to do that?

13 A. No, I did not.

14 Q. You never instructed anyone to do that,
15 correct?

16 A. To divide them by swimming ability?

17 Q. Swimming ability, yes.

18 A. No, we have not.

19 Q. Okay. Well, certainly you'll agree that if
20 you're not going to check a four-year old child's
21 swimming ability, you should treat them as a
22 non-swimmer?

23 MR. SNYDER: Objection, form.

24 A. We have all our counselors in the water with
25 our four-year olds --

□00098

1 Q. (BY MR. MARRS) And why?

2 A. -- as if none of them can swim.

3 Q. As if none of them can swim. Of course,
4 that's the safe thing to do, isn't it?

5 A. To have the counselors in the water?

6 Q. And treat them as non-swimmers, as if they
7 couldn't swim?

8 A. Well, that's why we put everybody -- that's
9 why our counselors, whether it's four or whatever
10 that they have to be in the water so that they can be
11 close -- be with the children when they are in the
12 water.

13 Q. Okay. Now, what about if you are -- what if
14 a counselor is sitting on the edge of the pool with
15 their feet in the water, is that considered following
16 your rule that they must be in the water at all times
17 with the children?

18 A. No. They must in the water.

19 Q. Okay. Now, what if they are sitting on the
20 rock ledge of the family pool, would that be

21 considered being in the water at all times with the
22 children?

23 A. Rock ledge, the fountains?

24 Q. Let me show you Exhibit Number 14. This is
25 the diagram that Mr. Griffin testified about --

□00099

1 A. Okay.

2 Q. -- yesterday, correct?

3 A. Yes.

4 Q. Okay. Now, what is this area here on the
5 west end between the sun deck where some bathing
6 chairs are shown and the steps? What's this area
7 called right here (indicating)? Is there some kind
8 of --

9 A. Yeah, a little -- a little walkway that
10 might -- that's not -- it's --

11 Q. Like a little bench in the water, is that
12 what that's like? Tell the jury who hadn't been out
13 here.

14 A. I think that's a -- something you could be
15 in the water and walk over to the ledge. I mean,
16 it's not a step, but it is a ledge, I guess,
17 that's --

18 Q. Well, okay.

19 A. -- that's submerged.

20 Q. Okay. How tall is that ledge?

21 A. I don't know.

22 Q. Okay.

23 A. I think that water there is maybe
24 3-and-a-half feet deep around there, so it might be
25 half of that maybe.

□00100

1 Q. Okay. Now, would you expect your counselors
2 who are supposed to be in the water with the children
3 to be in the water area with the children or is it
4 okay for you -- is it okay with you as the head of
5 the counselors that they be sitting over here on the
6 ledge? Is that considered --

7 A. If the children were with them, that's fine.

8 Q. What if the children are not with them?

9 A. We would -- we would -- We would require a
10 counselor to be with wherever the children are. They
11 need to be with them.

12 Q. Correct. Okay. Now, when you say that the
13 rule is that the counselors must be with the children
14 in the pool at all times, that certainly does not

15 mean the counselors can be off on a ledge talking
16 together while children are somewhere else in the
17 pool, correct? That would not be in keeping with
18 your safety standards?

19 A. That would not be our rules, right.

20 Q. And it wouldn't be in keeping with good
21 safety practices, would it?

22 A. No.

23 Q. Correct?

24 A. Correct. I'm sorry.

25 Q. And did you instruct your counselors on

□00101

1 that?

2 A. Yes.

3 Q. How often?

4 A. Once or twice a day for the 24 days that we
5 have camp, not in 2007, but normally. I'm sorry.

6 Q. And what would you tell them?

7 A. That you must be with your children in the
8 water when your group, regardless of age -- when you
9 are in the water, you -- when your children are in
10 the water, you have to be with them.

11 Q. And when you say to a counselor when your
12 children are in the water, when you say "your
13 children", what do you mean?

14 A. Your group. Your group of -- if you're with
15 the eight-year-old boys or six-year-old girls,
16 whatever.

17 Q. Okay. And what about here on the steps,
18 would it be okay if -- counselors sitting on the
19 steps, is that considered being in the water?

20 A. If they are with the kids, that's fine.

21 Q. What about here on the sun deck, same
22 answer?

23 A. Yeah. That's about 4 or 5 inches deep and
24 if they play with the kids there, that's fine, too.

25 Q. Okay.

□00102

1 A. While that's not deep, but if their kids are
2 over there, the counselors need to be there with
3 them.

4 Q. And what about this area (indicating), what
5 is that?

6 A. I think that's the same thing.

7 Q. You think that's still a ledge there?

8 A. Yeah.

9 Q. And same answer for that area that you gave
10 for this area here (indicating)?

11 A. I think so.

12 Q. Okay. And when you say they should be with
13 their children, should they be within arms-length of
14 the children assigned to them? I mean, what's your
15 rule on that? You don't want them across the pool
16 from the kids?

17 A. No. Certainly, for the four-year olds that
18 would be -- or the five-year-olds, something like
19 that, but you wouldn't do that with your older
20 group. You wouldn't say you have to, you know --

21 Q. Okay. But what would you do with the
22 four-year old group? What would you tell them in
23 terms of -- I mean, let's face it, they're teenagers
24 you're talking about, these counselors, right?

25 A. Most of them.

□00103

1 Q. I mean, they have to have specific
2 directions because if they don't, they're like any
3 other teenagers, they tend to get distracted,
4 correct?

5 MR. SNYDER: Objection, form.

6 A. Not always.

7 Q. (BY MR. MARRS) But sometimes it's
8 possible?

9 MR. SNYDER: Objection, form.

10 A. It's possible.

11 Q. (BY MR. MARRS) I mean --

12 A. It's possible.

13 Q. Anybody that's a parent of teenagers knows
14 that, correct, sir?

15 MR. SNYDER: Objection, form.

16 Q. (BY MR. MARRS) Teenagers tend to get
17 distracted.

18 A. They can.

19 Q. Did you -- Did you see Mr. Griffin's e-mail
20 yesterday where he talked about the fact that
21 teenagers need specific direction? Did you see that?

22 A. I heard -- I heard y'all. I heard you, yes.

23 Q. Okay. Would you agree with that?

24 A. Some teenagers do need more specific than
25 others, that's -- yes, that's true.

□00104

1 Q. And when you're dealing with teenagers as
2 counselors, you have to assume that they are going to

3 need specific directives and instructions on how to
4 do their job, correct?

5 MR. SNYDER: Objection, form.

6 A. I think so.

7 Q. (BY MR. MARRS) Okay. So back to where we
8 were. What did you specifically instruct them in
9 terms of how close those four-year-old kids had to be
10 to them at all times in the water?

11 A. I can't specifically remember what we
12 told -- each group would be, you know -- and CD
13 should be in -- as well. She would meet with them
14 regularly. Of course we said if you're with the
15 four- or five-year-old group, you have to keep them
16 together, close together. We would have said that
17 many times to them, many of the days that we were at
18 camp. While the older groups we would not have made
19 such an effort to make sure that they stayed very
20 close to the children.

21 Q. Okay. So back to my question. Did you or
22 the Racquet Club specifically instruct the counselors
23 who were assigned a four-year-old group as to how
24 close the four-year olds needed to be to them while
25 they were in the water or not?

□00105

1 A. Yes. Not a -- not a distance, but we would
2 say you have to be close to the children.

3 Q. Okay.

4 A. You can't let them --

5 Q. And to a teenager, what does that mean when
6 you say, you have to be close to the kids? Is
7 that --

8 A. With -- yeah, with them. You have to be
9 with them.

10 Q. Okay. And when you say with them or close
11 to them, that's what I'm trying to find out.

12 A. Okay.

13 Q. When you say that as the camp director, what
14 do you mean? Do you mean no more than -- in your own
15 mind, no more than 10 feet, no more than 15 feet,
16 within arms-length?

17 A. Within reach of each child.

18 Q. Okay.

19 A. What I would mean if I said that to the
20 children -- to the -- to the counselors.

21 Q. So that if a child goes under the water,
22 they can reach out and grab them, correct?

23 A. Of course.

24 Q. The safe standard is that the counselor must
25 be within arms-length of the child that they are

□00106

1 assigned to, correct?

2 MR. SNYDER: Objection, form.

3 A. I wouldn't probably say a certain length.

4 Someone's arms are shorter than other. I would

5 say --

6 Q. (BY MR. MARRS) That's why I said an arm --

7 your arm's length. They should be an arms-length

8 away from you and no further?

9 A. Close proximity where you could grab the

10 child.

11 Q. Correct. And that would be for whatever

12 counselor. Because their arm lengths are different,

13 that would be an arms-length away for that counselor,

14 correct?

15 A. Close proximity, definitely.

16 Q. That -- correct. And that would be the safe

17 standard to make sure that the child was no more than

18 an arms-length away from that counselor, correct?

19 A. Not in every case, but yes, if they were

20 standing or like Ms. M #1 took her -- she didn't

21 choose to keep -- she would come when her children

22 were at camp, so she would take her children away

23 from the camp to the lap pool. So certainly, the

24 counselor wasn't arms-length away from that. Or

25 if -- they might have been sitting in the zero entry

□00107

1 and one of the counselors might be within -- if they

2 are not even in the water, the counselor would be

3 right there. So I wouldn't say in every single

4 situation you would want to be where you're close

5 enough to --

6 Q. I understand.

7 A. But if they are in 3 and a half or -- feet

8 water, whatever that -- you would definitely with the

9 younger children be as close as you can to them.

10 Q. And definitely, if you're going to allow a

11 four-year old to be in 3 feet of water, to you the

12 safe standard would be to make sure they were within

13 an arms-length away, correct? And no more?

14 A. Very close proximity.

15 Q. At least an arms-length away so if they go

16 under, you can grab them, correct?

17 A. Yes.

18 Q. And -- okay. Now, when the counselors were
19 trained in terms of being in the water with the kids
20 at all times, were they specifically told to be
21 within an arms-length of four-year olds if they are
22 in 3 feet or deeper water with those children or not?

23 A. The groups that were assigned that could not
24 leave those areas, yes, like the 12-year olds can go
25 wherever they want, the four-year olds cannot go out

□00108

1 of that area, so yes, they would have been told, the
2 counselors that were assigned to them.

3 Q. Well, have you personally ever told --
4 strike that.

5 Did you ever personally tell a
6 counselor that if you've got a four-year-old group,
7 then the four-year old, if you have them in water
8 3 feet or deeper, must be within arms-length of you?
9 Have you ever specifically told a counselor that?

10 A. Certainly. The whole group -- the whole
11 group that was assigned to that, but not
12 necessarily -- I don't know if I -- I don't know what
13 terminology -- I don't say -- I don't know if I said
14 arms-length or close enough to grab or something like
15 that.

16 Q. Okay.

17 A. I'm not sure I said it like that.

18 Q. Now, getting back to the 2007 summer camp,
19 however, did you specifically tell any of the
20 counselors assigned to John Pluchinsky's
21 four-year-old group that if they are going to allow a
22 four-year old to be in water 3 feet or deeper, then
23 that kid must be within an arms-length of them, of
24 the counselor?

25 A. Yes. And CD would have as well.

□00109

1 Q. Okay. Which counselors?

2 A. The counselors weren't all the same the
3 whole time, so we would -- I think some of them
4 stayed the same throughout, but that would have been
5 standard for us to tell the four- and five-year olds.

6 Q. Okay. And --

7 A. But that week, we would have told those six
8 counselors.

9 Q. Well, are you assuming that you did or can
10 you --

11 A. No, I know that we did. I know that we
12 did. We told those six counselors that week and the
13 previous weeks, whatever the specific counselors
14 were, we would have -- and CD as well would have
15 talked to them about when they are at the pool.

16 Q. And you -- Now, I just want to be very
17 specific since this is very important and you're
18 under oath.

19 A. Right.

20 Q. And I just want to make sure we're all
21 clear. Did you tell them that they needed to keep
22 the four-year olds close to them or did you tell them
23 they needed to keep them within arms-length of them
24 or what terminology did you use?

25 A. Probably --

□00110

1 Q. I think that's what you brought up before.

2 A. Yeah, close proximity, able to grab them.

3 Q. Okay. And which four-year old counselors
4 assigned to John Pluchinsky's group were within an
5 arms-length of him when he was floating facedown in
6 the water?

7 A. I just know of the CPS report, I guess, or
8 the -- or one of the -- I wasn't there, so I just --
9 what I've read of the CPS or the police report.

10 Q. Do you know whether or not there was a
11 counselor within arms-length of John at the time he
12 began to struggle in the water?

13 A. I don't --

14 MR. SNYDER: Objection, form.

15 A. Yeah. I don't know when John's -- if he
16 ever struggled or when he would have started
17 struggling.

18 Q. (BY MR. MARRS) Okay. You had no firsthand
19 knowledge one way or the other whether there was a
20 counselor within arms-length of John at any given
21 time when he was in the pool, correct?

22 A. Just off the statements that the counselors
23 wrote.

24 Q. And none of those statements are from anyone
25 that state that they saw John enter into water 3.6-

□00111

1 3.5- or even 3-feet deep, correct?

2 A. Not that I've read.

3 Q. Those are all statements of people who saw
4 him after the fact, after he was already floating in

5 the water, correct?

6 A. Yes.

7 MR. SNYDER: Is it a good time for a
8 break since we've been going a little over an hour?

9 MR. MARRS: Yeah. Let me ask one
10 more.

11 Q. (BY MR. MARRS) No particular counselor, no
12 one counselor was assigned a specific task of
13 watching John Pluchinsky, correct?

14 A. Correct.

15 Q. Every counselor that was assigned John
16 Pluchinsky's group was assigned to watch everyone in
17 John Pluchinsky's group, not one -- any particular
18 camper, correct?

19 A. We didn't assign any one counselor to any
20 one child.

21 Q. Okay. So the answer is correct, right?

22 A. Yes.

23 Q. So everyone was responsible for everyone,
24 but no one was responsible for any particular child,
25 correct?

□00112

1 A. We didn't assign -- we didn't assign any one
2 child to any one counselor.

3 Q. So that's correct, correct, sir?

4 A. That we -- That we didn't assign one person
5 to John?

6 Q. That everyone in the group of counselors
7 assigned to the group of four-year olds that John
8 belonged to was assigned to watch the entire group,
9 but no counselor was specifically assigned to watch
10 any particular camper in John's group?

11 A. That's correct.

12 MR. MARRS: Let's take a break.

13 VIDEOGRAPHER: Off the record. The
14 time is 2:50 p.m.

15 (Brief recess.)

16 VIDEOGRAPHER: Back on the record. The
17 time is 3:11 p.m.

18 Q. (BY MR. MARRS) Mr. Lamkin, in looking at
19 Exhibit Number 14, the diagram of the family pool,
20 the four-year-old children and their counselors were
21 not limited to staying within any particular area in
22 the family pool, correct?

23 A. Were they limited? Yes.

24 Q. They were limited to what?

25 A. All -- basically where this gold line you

□00113

1 have on here.

2 Q. This yellow highlighted line?

3 A. Yeah. The 3-and-a-half feet would be the

4 max, I think, that they would be allowed to go in.

5 Q. Well, you know -- you know for a fact that

6 even in the 2007 summer camp that four-year-old

7 children were all over in all areas of the family

8 pool; you know that, don't you?

9 A. I didn't know that. They -- Maybe they were

10 piggy-backing with the counselor. I don't know. I

11 don't -- I didn't know that they were. I mean,

12 that's --

13 Q. Well, there's no rule against --

14 A. No, there's not.

15 Q. -- counselors taking four-year olds to any

16 particular part of the pool, correct?

17 A. Four-year olds can't go to the lap pool.

18 They can't go to the diving boards. They can't go to

19 the slide area. They can't get on the slide. They

20 can play on the fountain. I guess if they were

21 piggy-backing them to that side, you know. I don't

22 even know the depth over there by the -- by your

23 second gold line across there.

24 Q. Okay. So back to my question. There's no

25 rule at the Racquet Club during the 2007 summer camp

□00114

1 preventing four-year olds or their counselors from

2 going in any particular area of the family pool,

3 correct?

4 MR. SNYDER: Objection, form.

5 Q. (BY MR. MARRS) Your rule is that the

6 counselors are to be in the water with the four-year

7 olds at all times, correct?

8 A. Correct.

9 Q. But you have no rule that the counselors

10 can't take the four-year olds to any particular area

11 of the family pool, correct?

12 A. I have no written rules on those.

13 Q. Okay. You have no verbal rules on that?

14 A. I have verbal rules that they can't go to

15 the slide.

16 Q. We're talking about the family pool.

17 A. I think -- I think slide is -- I mean, we

18 consider the slide area --

19 Q. Okay.
20 A. -- the family pool as well.
21 Q. Okay. But separate and apart from the
22 slide, there's no area in the family pool that was
23 off-limits to the counselors and four-year olds
24 participating in the 2007 summer camp, correct?
25 A. That second gold line is probably a rope

□00115

1 that the lifeguards wouldn't allow anybody, much less
2 the four-year olds, to go past. I think that's the
3 safety zone for children coming out of the flume of
4 the slide.

5 Q. Right here (indicating)?

6 A. Yes, sir, I think so.

7 Q. Okay. But, so what you're saying is that
8 you believe that this area between the rope and
9 floats and east, towards the slide, may have been a
10 no-go area or prohibited area for four-year-olds, but
11 other than that, there's no prohibition against
12 four-year olds and their counselors going to any
13 other part of the family pool, correct?

14 A. I have no written rules restricting them to
15 the area that you've got in gold down there, kind of
16 the 3-and-a-half feet side.

17 Q. Do you have any verbal rules against
18 counselors taking four-year olds to any area west of
19 this float line?

20 A. No. I wouldn't even have a verbal. We
21 would have said --

22 Q. That's acceptable?

23 A. Okay. Stay away from the three things I
24 mentioned.

25 Q. So west of the float line there was no

□00116

1 verbal or written rule whatsoever that four-year olds
2 and the counselors could not go in areas west of the
3 float line, correct?

4 A. No, sir, not from me.

5 Q. Okay. Or from anyone to your knowledge,
6 correct?

7 A. I'm not sure. Ms. CD may have or
8 Supv CC #1 or Supv CC #2 who were supervisor -- pool
9 supervisors on Wednesday -- Wednesdays. They may
10 have limited them verbally.

11 Q. Okay.

12 A. I have nothing in writing and I never said

13 anything.

14 Q. Okay. Let's just clarify. As far as you
15 know, there was no written or verbal or any rule
16 prohibiting four-year olds or their counselors from
17 any area of the family pool other than east of the
18 float line towards the slide, correct?

19 A. That's correct.

20 Q. Now, what is the water depth in this area
21 east of the float line, do you know?

22 A. I think in Guillermo -- Mr. Palmer knows, I
23 think, more accurately. I think it's 5 feet at least
24 coming off underneath the flume, but I'm not sure.
25 I'm not sure exactly.

□00117

1 Q. Okay. And how deep is this area that's
2 circled right here on Exhibit 14?

3 A. I think that's 3-and-a-half --
4 3-and-a-half feet.

5 Q. Was there any particular counselor during
6 the 2007 summer camp in week five -- I mean, strike
7 that.

8 You already told me that no specific
9 counselor was assigned to any specific four-year-old
10 camper for the 2007 summer camp, correct?

11 A. Yes.

12 Q. And that the entire -- well, how many -- how
13 many counselors were assigned to watch all of John
14 Pluchinsky's four-year-old group?

15 A. Six counselors were assigned to John's
16 13 boys -- I'm sorry -- the four-year-old boys.

17 Q. Six counselors were assigned to watch both
18 four-year-old groups, the four-year-old boys and the
19 four-year-old girls or six for just John Pluchinsky's
20 group?

21 A. Right. Six counselors were just for the
22 boys, John's 13.

23 Q. And how many counselors were assigned for
24 the four-year-old girls group that was in the pool at
25 the same time?

□00118

1 A. I think there were four.

2 Q. So, are you saying there were 10 counselors
3 in the pool at the time of the incident on July 18th,
4 2007?

5 A. Yes.

6 Q. Would that -- and plus two supervising

7 counselors?

8 A. I think Supv CC #2 -- I'm going from his
9 statement to either CPS or the -- Mr. -- Officer
10 Beverage that Supv CC #2 was in the water and Supv CC #1 was
11 walking the sides.

12 Q. So total, whether they are supervisors or
13 not, is it your testimony there were a total of
14 10 counselors in the family pool at the time of the
15 incident on July 18th?

16 A. At least, yes.

17 Q. There could have been more, correct?

18 A. Probably not. I mean, I guess there's a
19 possibility, but again, I'm just going by the
20 statements I read.

21 Q. Was there a seven-year-old-group counselor
22 in the pool at the time?

23 A. I don't think so. Supv CC #1, who was a
24 supervisor that day, states that the seven-year-old
25 boys were, I think, leaving as the four-year-old boys

□00119

1 arrived, so...

2 Q. And as a second four-year-old-boy group was
3 arriving, correct?

4 MR. SNYDER: Objection, form.

5 Q. (BY MR. MARRS) Is that what you're saying?

6 A. No, no. I think the seven-year-old boys
7 left when John -- when John's group arrived.

8 Q. Okay. But wasn't another -- didn't you read
9 the statement where a seven-year-old-boys group was
10 getting out of the pool and drying off at the time
11 that 15 y/o LG #1 blew her whistle?

12 A. Do you have that one? I think I do remember
13 that somebody said the boys were drying off when --

14 Q. Okay. We'll get to that when I get to the
15 statements.

16 So, where I was going on counselors and
17 assignments, you said that no particular counsel --
18 counselor was assigned the task of watching any one
19 particular child in John's group, correct?

20 A. Yes.

21 Q. Was there any counselor assigned to watch
22 any group smaller than the entire group of
23 four-year-old boys?

24 A. Not to my knowledge.

25 Q. No counselor assigned to watch specifically

□00120

1 two or three specific campers at a time, correct?

2 A. Not by me and not to my knowledge.

3 Q. Okay. So that's correct, to your knowledge?

4 A. Yes.

5 Q. And then how did the counselors in the group
6 assigned to watch John Pluchinsky's entire group
7 decide which particular kids they were going to look
8 out after?

9 A. And that would be, I guess, something the
10 counselors could better address, but they would -- I
11 assume that they would divide up if 4 y/o B-CC #1 had
12 three little boys that played with her. That's the
13 three boys that would play with her. And then
14 they -- it would be a counselor -- it would be a
15 counselor decision.

16 Q. Okay.

17 A. It wouldn't -- it wasn't coming from --
18 unless specifically Supv CC #2 or Supv CC #1, who were pool
19 supervisor that day, said watch those boys or be with
20 those boys or CD might have said something
21 to them, but not to my knowledge.

22 Q. You don't specifically know how that
23 occurred on July 18, 2007, correct?

24 A. No, sir.

25 Q. Is that correct?

□00121

1 A. Yes. I'm sorry.

2 Q. But you do know that generally that was left
3 up to the counselors to decide exactly which
4 particular children they were going to watch that
5 day, correct?

6 A. Yes.

7 Q. And have you ever seen a four-year old on
8 the slide at the family pool?

9 A. I don't think -- probably not. I think
10 there's a -- and Guillermo can speak to this better.
11 I think there's a 48-inch sign -- I guess -- I don't
12 think that I have unless they were with -- no, I
13 don't -- I don't guess I did. Certainly not during
14 camp, but are you speaking of anytime I've -- we've
15 had the pool open?

16 Q. I'm thinking of at any time during a summer
17 camp at the Racquet Club, have you --

18 A. I've never heard of that nor have I seen it
19 or has it been reported to me.

20 Q. With your knowledge as a CPR and AED

21 instructor, is vomiting generally indicative of
22 drowning?

23 A. Yes.

24 Q. And will abdominal thrusts generally result
25 in vomiting coming up?

□00122

1 A. Not always, not always.

2 Q. But with respect to John, when you did the
3 two abdominal thrusts, it did result in vomit coming
4 up, correct?

5 A. And water, yes.

6 Q. Are you aware of any incident at the Houston
7 Racquet Club where someone suffered a heart attack?

8 A. Yes, sir.

9 Q. How many occasions?

10 A. At least one, at least one.

11 Q. And when was that?

12 A. Several years ago. Probably in the -- in
13 the late '90s.

14 Q. Has there been one more recent than that, to
15 your knowledge?

16 A. No, not to my knowledge.

17 Q. And who was the heart attack victim in
18 the '90s, to your knowledge, in the late '90s?

19 A. I have no idea. It was a --

20 Q. A gentleman?

21 A. It was a gentleman participating in our
22 World Oilman's Tournament.

23 Q. Okay. And was he -- Did any Racquet Club
24 employees perform CPR on him?

25 A. No. My assistant and I got there, but there

□00123

1 was already a doctor and a lady helping -- doing CPR
2 on him.

3 Q. Okay. And was an AED device used on that
4 gentleman?

5 A. No, sir.

6 Q. Were AED devices available at the Racquet
7 Club at that time?

8 A. No, sir.

9 Q. Are you sure?

10 A. Uh-huh.

11 Q. Did that gentleman survive, to your
12 knowledge?

13 A. No, I don't think he did.

14 Q. And do you think that an AED device might

15 have made a difference for that particular victim --

16 MR. SNYDER: Objection, form.

17 Q. (BY MR. MARRS) -- if it had been

18 available --

19 MR. SNYDER: Objection, form.

20 Q. (BY MR. MARRS) -- with your knowledge as an

21 AED instructor?

22 A. I have no idea.

23 MR. SNYDER: Objection, form.

24 Q. (BY MR. MARRS) Okay. You mentioned earlier

25 that during the first two weeks of summer camp,

□00124

1 something about even though there was no swimming

2 ability test given to John, that in the first two

3 weeks of camp there was something about swimming

4 tests or something. And I just want to get more

5 information on that.

6 What did you instruct or teach your

7 counselors in those first two weeks with respect to

8 testing a kid's swimming ability, if anything?

9 A. Probably nothing.

10 Q. Okay. And what did anybody at the Houston

11 Racquet Club teach or instruct counselors with

12 respect to the testing of swimming ability for four-

13 or five- or six-year olds participating in summer

14 camp?

15 A. We really didn't test anybody. We didn't

16 test anybody.

17 Q. Okay.

18 A. It was a -- it was called a swim

19 certification type thing. We --

20 Q. It wasn't really to test or to find out the

21 swimming ability particularly of a child, was it?

22 A. No. It was like our soccer certification.

23 Q. Okay. Should the swimming abilities of all

24 young children participating in a summer camp at the

25 Racquet Club be tested?

□00125

1 MR. SNYDER: Objection, form.

2 Q. (BY MR. MARRS) In your opinion?

3 MR. SNYDER: Objection, form.

4 A. If it -- not our camp. Swim camp, I guess,

5 but not our camp.

6 Q. (BY MR. MARRS) As a matter of fact, the

7 2007 summer camp that John participated in was not a

8 swim camp, was it?

9 A. No, sir.

10 Q. As a matter of fact, although you had
11 previous weeks that were more devoted to swimming,
12 week five was devoted to what, mad science?

13 A. That may have -- that may have been a
14 program.

15 Q. Would you like to see the schedule?

16 A. You know, I think it was -- it may have been
17 space week.

18 Q. Space week and mad science?

19 A. I think so. I think it was --

20 Q. Okay.

21 A. Yes, it was space week. Mad science, that
22 was their big week.

23 Q. And we can see that on Exhibit Number 6, the
24 Kids Camp News scheduling for four-year-old boys,
25 John's group for week number 5. It says Space and

□00126

1 Sports Week, correct?

2 A. Yes.

3 Q. And the focus certainly was not on swimming,
4 but instead on other things like flying saucers,
5 moonwalk fun, things of that nature relating to
6 science, correct, sir?

7 A. Yes.

8 Q. But nonetheless, if you were going to allow
9 young children in your family pool as part of your
10 summer camp, wouldn't it be a good safety practice to
11 test their swimming ability?

12 MR. SNYDER: Objection, form.

13 A. Probably not in our type of camp. Ours is
14 a -- is a sports-type camp. That's why I -- that's
15 why we as a club required our counselors, at least in
16 the summer camp, to be in the water with the
17 children.

18 Q. (BY MR. MARRS) And when they are in the
19 water with children and, as you say, in close
20 proximity as required to the children that they are
21 assigned to and supposedly watching the individual
22 children that they among themselves have decided to
23 watch, they should be continuously watching those
24 children, correct?

25 A. Yes.

□00127

1 Q. And not taking their eyes off those
2 particular children for any length of time, correct?

3 MR. SNYDER: Objection, form.

4 A. I'm sorry. I got behind on that one. Would
5 you just explain that -- repeat that.

6 Q. (BY MR. MARRS) When those counselors are in
7 the water with those four-year-old boys and they are
8 watching whatever particular two or three children
9 that they among themselves have decided to watch,
10 they are required by you and the club to keep
11 constant and close supervision on those particular
12 children, correct?

13 A. Except the fact that the counselors would --
14 the counselors may or may not have chosen any
15 particular kids. Maybe it was a -- see, I'm speaking
16 for the counselors and I --

17 Q. No. You're speaking as a man who is over
18 the summer camp and should know exactly how the
19 counselors are doing their job duties at that summer
20 camp, correct, sir?

21 MR. SNYDER: Objection, form.

22 A. Then the counselors should be watching all
23 the groups as a whole. They should be -- if they've
24 split them up for whatever reason, then it's
25 nothing -- then it's something that they have done on

□00128

1 their own and even if they picked -- even if
2 "Counselor A" picked child one, two, three, they
3 would still be vigilant. We would insist they be
4 vigilant, watching child four, five, six if they came
5 in close proximity to them.

6 Q. (BY MR. MARRS) Well, not if they came
7 within close proximity. You require them to be
8 within close proximity to those particular children
9 they are watching, correct?

10 A. Right. If counselor 2 had brought child
11 four, five, six near them, then it would be two
12 counselors watching six children --

13 Q. Okay.

14 A. -- would be my understanding, how I would
15 have wanted it.

16 Q. And you require them to closely supervise at
17 all times the children that they are watching,
18 correct?

19 A. Yes.

20 Q. And you are required -- they are required to
21 constantly watch these children because you know a
22 child can drown in seconds, correct?

23 A. Yes.

24 Q. And they are to keep their eyeballs, at
25 least one counselor to keep their eyeballs on --

□00129

1 strike that.

2 There is not one child, one
3 four-year-old boy that should be left unwatched for
4 even a second in your family pool; don't you agree
5 with that?

6 MR. SNYDER: Objection, form.

7 A. With the exceptions that we talked of
8 earlier, Ms. Blum -- Ms. M #1 chose to take her
9 child. She would come to camp during her swim time
10 and take her child over to the -- to the lap pool.

11 Q. (BY MR. MARRS) I'm talking about when the
12 children are under the custody of your counselors in
13 your family pool. When those children, the
14 four-year-old boys are in the custody and care of
15 your counselors, you expect that every single one of
16 those four-year-old campers are being watched every
17 second while they are in the water in your family
18 pool under the protection of your counselors,
19 correct?

20 MR. SNYDER: Objection, form.

21 A. That's what we tell them.

22 Q. (BY MR. MARRS) And that's what you expect,
23 correct?

24 A. That's what we tell them, yes.

25 Q. And why is that important?

□00130

1 A. Because we're not as -- we don't rate or
2 test the children, so our counselors are -- have to
3 be in the water with the children when the campers
4 are in the pool.

5 Q. And not just in and around them, watching
6 them specifically every second so they don't drown,
7 correct?

8 A. Hopefully interacting and playing and
9 having -- letting the children have fun.

10 Q. And watching them?

11 A. Yes.

12 Q. That's the number one thing, right?

13 A. Right. Certainly.

14 Q. And if a kid goes unwatched, what can happen
15 if they are in the family pool?

16 MR. SNYDER: Objection, form.

17 A. I don't even -- I would just be guessing or
18 speculating, I mean, anything.
19 Q. (BY MR. MARRS) They could slip under the
20 water and drown, couldn't they, if they're not
21 watched?
22 A. Or nothing, I guess. Nothing could happen.
23 Q. But that could happen, couldn't it?
24 A. That's a possibility, I guess, sure.
25 Q. Now, so that a four-year old does not get

□00131

1 lost in the cracks, wouldn't it be safer to
2 specifically assign a camper or one or two or three
3 campers, four-year-old boys to a specific camper so
4 that that camper knows at any given second that kid
5 one, two and three is being watched? I have those
6 three kids, I am watching them at every given
7 second. I've got John, Mary, Paul. Wouldn't that be
8 safer --
9 MR. SNYDER: Objection.
10 Q. (BY MR. MARRS) -- than the way that you did
11 it for the 2007 summer camp?
12 MR. SNYDER: Objection, form.
13 A. Probably not.
14 Q. (BY MR. MARRS) Probably not?
15 A. I don't --
16 Q. Okay. So tell me this: Which counselor was
17 specifically assigned to watch John Pluchinsky and
18 one or two other campers?
19 MR. SNYDER: Objection, form.
20 A. I -- And I don't know of anyone that
21 supervisor-wise that assigned anybody to watch John
22 specifically. And through the notes and stuff that
23 I've read, I don't find it there either. I think
24 everyone was watching everyone.
25 Q. (BY MR. MARRS) If everyone watches

□00132

1 everyone, then it's possible a four-year-old boy
2 could get lost in the cracks because, well, I think
3 someone else must be watching him. I'm watching
4 these. So I'm watching this kid over here. There
5 are kids all over the pool and counselors all over
6 the pool. How is a counselor going to know whether
7 all the children are being watched all the time --
8 MR. SNYDER: Objection, form.
9 Q. (BY MR. MARRS) -- under that kind of
10 scenario that you have testified was the method that

11 you used for counselors to watch children?

12 MR. SNYDER: Objection, form.

13 A. We expect them to be very diligent, the
14 counselors, to go by what we've asked, keep the kids
15 within close proximity.

16 Q. (BY MR. MARRS) So, you left it up to the
17 teenage counselors to decide among themselves how
18 these four-year olds would be divvied up among the
19 counselors for close supervision, correct?

20 MR. SNYDER: Objection, form.

21 A. We --

22 Q. (BY MR. MARRS) You didn't even require
23 that, did you?

24 A. We didn't -- we do not assign counselors to
25 any specific child.

□00133

1 Q. And you don't even require them to divvy the
2 kids up among themselves, do you?

3 A. Absolutely not, no.

4 Q. Everyone watches everyone, correct?

5 A. Yes.

6 Q. Okay. Then every single counselor
7 responsible for watching John Pluchinsky's group was
8 in close proximity and arms-length of John Pluchinsky
9 when he entered the 3.6-foot deep area; is that
10 correct?

11 A. I wasn't -- I wasn't there. I don't even
12 know --

13 Q. Okay.

14 A. -- when or where John entered the pool.

15 Q. Being the camp director of 2007 summer camp,
16 certainly you were concerned enough to find out
17 exactly which of your "campers" were watching John
18 Pluchinsky at the time he drowned, correct?

19 A. We -- I haven't found that out. I don't --
20 I don't know who was closest to John.

21 Q. Well, but you're the -- you're the summer
22 camp director. Did you not inquire?

23 A. Yes. I had each one write a statement, so
24 that I could -- so we could see or get some answers
25 for everybody.

□00134

1 Q. Okay. And after you got the statements and
2 after you talked to the counselors, you determined
3 exactly which particular counselor was watching John
4 Pluchinsky at the time he drowned, correct?

5 A. No, sir. I don't know when John drowned or
6 when he --

7 Q. Do any of the counselors know how John
8 Pluchinsky ended up in 3.6-foot-deep water, to your
9 knowledge?

10 A. Not -- no, sir, not from the statements I've
11 read and not from the police report that they talked
12 to them and nor from the CPS interviews.

13 Q. Each and every one of those counselors was
14 fully available to you on July 18th, July 19th for
15 you to ask them any question you wanted, correct?

16 A. Yes.

17 Q. Okay. As their ultimate supervisor and as
18 camp director, tell me, tell the family which
19 counselor was watching John Pluchinsky when he
20 entered 3.6-foot-deep water.

21 A. That -- I asked each one of them to write
22 exactly where they were and what they had -- what
23 they had been doing. And there's no indication from
24 any of those reports, from myself, the police that
25 talked with them, Officer Beverage and the CPS

□00135

1 reports that I've read that indicate who saw anything
2 when John -- if, in fact, he did enter whatever -- if
3 he entered that water himself or whatever.

4 Q. Then I take it from your testimony, you
5 don't know who was watching John Pluchinsky at the
6 time he drowned, correct?

7 A. Right. I can't tell from those reports and
8 I -- and I wasn't there.

9 Q. To your knowledge, does anyone know who was
10 watching John Pluchinsky when he drowned?

11 A. No, sir, not to my knowledge.

12 Q. That means that no one was watching John
13 Pluchinsky when he drowned, doesn't it, sir?

14 MR. SNYDER: Objection, form.

15 A. I don't -- I don't -- I don't think it means
16 that.

17 Q. (BY MR. MARRS) Well, let's visit about
18 that. Every single person that was supposed to be
19 watching John Pluchinsky gave you a statement,
20 correct?

21 A. Yes.

22 Q. And every single one of those counselors was
23 available to answer any question you had, correct?

24 A. Yes.

25 Q. And yet after talking to them, after getting
□00136

1 their statements, you can't figure out anyone, any
2 particular counselor that was watching John
3 Pluchinsky when he drowned, correct?

4 A. That's correct.

5 Q. Now, certainly because you were concerned,
6 and I know you were very concerned after John
7 drowned, certainly you asked your counselors who was
8 watching John, who was watching him, didn't you?

9 A. Instant -- as soon as we -- as soon as EMS
10 had taken John to the ambulance, I said, "What
11 happened?"

12 They said, "We don't know."

13 That's the last -- then Officer
14 Beverage took over and said, "I need to talk to each
15 one individually." And so I --

16 Q. Okay. Go ahead.

17 A. And I didn't have a chance to talk to
18 anybody else. As soon as I got them back over into
19 my place, I said, "Please, everyone, write a
20 statement."

21 Q. Okay.

22 A. Not picking anybody out. All my
23 counselors -- I said, "Write a statement, where you
24 were, what you were doing."

25 Q. Okay. So is it your testimony that even
□00137

1 though you are the camp director of the very camp
2 where John drowned, you did or did not bother to ask
3 the counselors who was watching John, this child that
4 drowned?

5 A. No, I don't think I asked that specific
6 question.

7 Q. Who did?

8 A. I guess, and I don't -- I'm not for sure.
9 It looks like CPS Gayila Bolden, who was doing the
10 interviews, and Officer Beverage who did the
11 interviews.

12 Q. And have you seen those interviews?

13 A. Yes, sir.

14 Q. And even after reading those interviews, can
15 you figure out who was watching John Pluchinsky when
16 he drowned?

17 A. No, sir, I can't.

18 Q. And when I asked you if anyone asked, you

19 mentioned Gayila Bolden and the police department.

20 Did they ask that obvious question?

21 A. I wasn't -- I didn't -- I wasn't in there.

22 They --

23 Q. You read the interviews, didn't you?

24 A. Right.

25 Q. So, did they ask that question?

□00138

1 A. I probably want to look at their statements

2 to see if it shows what Ms. Bolden asked. And I

3 don't think it shows what Officer Beverage said,

4 but --

5 Q. Okay. So after you took statements of every

6 single counselor on July 15th -- excuse me, strike

7 that.

8 Even after you as camp director of the

9 very camp where this child drowned took statements of

10 every counselor that was there on July 18, 2007 when

11 John drowned, even after you read the interviews of

12 all those counselors that the CPS took, the

13 interviews that the police took and even after the

14 club conducted its own investigation, you still to

15 this day do not know who was watching John Pluchinsky

16 when he drowned, correct?

17 A. No, sir, I do not.

18 Q. Is that correct?

19 A. Yes.

20 Q. And to your knowledge, no one else at the

21 club knows either, correct?

22 A. Not to my knowledge.

23 Q. Correct?

24 A. Correct.

25 Q. And to clarify, no one was assigned other

□00139

1 than everyone to watch John Pluchinsky, correct?

2 A. Yes, sir, correct.

3 Q. But what you have learned from the police

4 interviews and the statements taken by you and the

5 CPS interviews is that there were counselors in your

6 pool at the very moment that John was discovered

7 playing with each other instead of supervising

8 children, correct?

9 MR. SNYDER: Objection, form.

10 A. Oh, I haven't -- I don't think I've read

11 that yet.

12 Q. (BY MR. MARRS) But you didn't read those

13 statements from various individuals saying exactly
14 that?

15 A. The counselors?

16 Q. Yes, sir.

17 A. No.

18 Q. Did you read the CM #1 e-mail where
19 she said that she saw numerous counselors
20 approximately ten minutes before John's drowning
21 clustered together, playing with each other instead
22 of supervising the children?

23 A. Yes, sir. I read that one.

24 Q. Does that disturb you?

25 MR. SNYDER: Objection, form.

□00140

1 A. Well, I don't think it's -- I don't think
2 it's accurate. While Ms. CM #1, I think conveyed
3 what she thought, but I don't think that's accurate.

4 Q. (BY MR. MARRS) Okay. You were not there
5 ten minutes before John Pluchinsky drowned, were you?

6 A. No, sir.

7 Q. CM #1 was, wasn't she?

8 MR. SNYDER: Objection, form.

9 A. I'm not sure when John drowned. I mean -- I
10 mean --

11 Q. (BY MR. MARRS) Well, from all reports,
12 didn't he drown around 11:10, 11:15 on July 18th? Is
13 that about right?

14 A. I think that's when the lifeguards
15 spotted --

16 Q. Spotted him --

17 A. -- John floating and --

18 Q. -- in the pool.

19 A. -- and 4 y/o B-CC #3-- called to 4 y/o B-CC #3 and he
20 turned around and picked him up.

21 Q. He could have drowned minutes before that,
22 couldn't he have? We don't know, do we?

23 A. We don't know. I don't know.

24 Q. My point is, CM #1 was there at some
25 point before John Pluchinsky drowned and you were

□00141

1 not, correct?

2 A. Yes.

3 Q. What facts are you personally aware of that
4 indicates what CM #1 describes in her e-mail
5 on July 18th of 2007 is inaccurate in any way?

6 A. I guess many of the statements that the

7 counselors wrote for me or for CPS or for Officer
8 Beverage in written form. And I'd have to look at
9 the -- I can't remember -- I would have to look at
10 the statements made to either CPS or Officer -- I
11 don't think he did -- it must have been CPS that
12 interviewed and visited with M #1 --
13 Ms. M #1 . I would have to see hers and I think
14 there were a couple of other moms that were -- had
15 been in the pool and then -- and then -- or outside
16 the pool. Maybe at that -- at the pool, but not in
17 it.

18 Q. I guess I wasn't clear. I was asking you if
19 you had any facts that you personally were aware of
20 to indicate that what Ms. CM #1 describes occurred
21 10 or 15 minutes before John Pluchinsky's death was
22 in any way inaccurate, that you personally know of?
23 Not statements you've read. I mean, you weren't
24 there.

25 MR. SNYDER: Objection, form.

□00142

1 A. Yeah, I wasn't there. So -- just the things
2 that are written that I've seen or heard.

3 Q. (BY MR. MARRS) Okay. So, you're not
4 personally aware of any specific facts about what was
5 going on in that pool 10 or 15 minutes before John
6 Pluchinsky's death, correct?

7 MR. SNYDER: Objection.

8 Q. (BY MR. MARRS) Personally aware?

9 MR. SNYDER: Objection, form.

10 A. I -- yeah, you're right. I wasn't there.

11 I --

12 Q. (BY MR. MARRS) So you can't say personally,
13 based on the facts that you know from firsthand
14 knowledge, that anything in Ms. CM #1 's e-mail is
15 inaccurate, can you?

16 A. Firsthand --

17 MR. SNYDER: Objection, form.

18 A. -- meaning. Okay. Yeah, I wasn't there.

19 You're right.

20 Q. (BY MR. MARRS) Were you aware of the fact
21 that CM #1 was at that family pool with
22 4 y/o-C #7, her four-year-old son, who was a summer
23 camp participant because she did not trust your
24 lifeguards or counselors to take care of her little
25 child in the summer camp? Did you know that?

□00143

1 MR. SNYDER: Objection, form.
2 A. No. I haven't -- I haven't heard that.
3 Q. (BY MR. MARRS) She's a member, isn't she?
4 A. M #1 ?
5 Q. Yes.
6 A. Ms. CM #1 , yes.
7 Q. Yes. Were you aware of the fact that many
8 members will not put their kids in the summer camp at
9 the Houston Racquet Club because they've seen how the
10 lifeguards don't pay attention to the children? Were
11 you aware of that? Have you heard that?
12 MR. SNYDER: Objection, form.
13 A. No, I have not.
14 Q. (BY MR. MARRS) Were you aware of the fact
15 that had Kathleen Pluchinsky been a member of your
16 club instead of a non-member, she likely would have
17 heard those comments and would never have put her
18 children in your summer camp?
19 MR. SNYDER: Objection, form.
20 A. I don't know that.
21 Q. (BY MR. MARRS) But you are aware since
22 we're talking about statements, of Sr LG #1 's
23 statement, where she believes that the counselors
24 need to pay better attention to the campers. Have
25 you seen that?

□00144

1 A. I did see that, yes.
2 Q. And assuming -- let's just assume that what
3 CM #1 says about what was going on at your
4 family pool 10 or 15 minutes before John Pluchinsky
5 drowned was true, that would be an unsafe condition,
6 wouldn't it, if what she says is true?
7 A. Well, I just can't speak to whether
8 Ms. CM #1 's statement was true.
9 Q. And I'm not asking you to. But if it's
10 true -- I'm not asking you to say it's true or not.
11 But if those circumstances in your family pool with
12 your counselors as described by Ms. CM #1 were
13 true, that would be an unsafe condition, wouldn't it?
14 MR. SNYDER: Objection, form.
15 Q. (BY MR. MARRS) It's unsafe for counselors
16 to be playing and congregating among themselves
17 instead of supervising the little campers in your
18 pool, isn't it?
19 MR. SNYDER: Objection, form.
20 A. But our counselors don't do that or they --

21 our counselors don't do that. So I can't suddenly
22 say yes, that would happen because they just don't do
23 that. We --

24 Q. (BY MR. MARRS) Okay. So you were in the
25 family pool yourself how many minutes before John

□00145

1 Pluchinsky drowned?

2 MR. SNYDER: Objection, form.

3 A. I can't -- I can't remember. I don't know
4 when John drowned, one. I had been in the pool two
5 or three times that morning, probably.

6 Q. (BY MR. MARRS) Okay. Were you at the
7 family pool at any time from 10:30 a.m. till right
8 when 15 y/o LG #1 blew her whistle on July 18, 2007?

9 A. I'm not sure of the exact time I left the
10 pool area and headed and went out to the camp house.

11 Q. Let's make it simple. Were you at the
12 family pool at any time during the 20 minutes before
13 15 y/o LG #2 came in your office and got you?

14 A. No.

15 Q. So you cannot say one way or the other what
16 was going on at your family pool 15 minutes before
17 John Pluchinsky was discovered floating facedown, can
18 you?

19 A. Not --

20 MR. SNYDER: Objection, form.

21 A. -- not firsthand knowledge. I wasn't there.

22 Q. (BY MR. MARRS) Who was supposed to be
23 supervising those counselors in the pool at the time
24 that John Pluchinsky was in the pool on July 18th?

25 A. Supv CC #1 and Supv CC #2 were the two

□00146

1 pool supervisors -- pool supervisors that we sent
2 over to the pool that day.

3 Q. And how old was Supv CC #1 at the time?

4 A. Supv CC #1 ? I guess 20, maybe, 19 or 20. 20
5 probably.

6 Q. How about Supv CC #2 as of that time?

7 A. Supv CC #2 was probably 17 or 18. I think I've
8 got that -- I think Supv CC #2 was 18.

9 Q. And was Supv CC #1 in the water?

10 A. No.

11 Q. Was Supv CC #2 ?

12 A. Yes.

13 Q. Where was Supv CC #1 ?

14 A. Well, I mean, I don't -- I'm going off --

15 Q. According to Supv CC #1 's statement, where was
16 he?

17 A. He was walking the side of the pools -- the
18 pool.

19 Q. Was he at the family pool?

20 A. Yes.

21 Q. And how were the counselor's supervisors,
22 such as Supv CC #1 and Supv CC #2, trained to supervise the
23 other counselors?

24 A. Both had been in the program as counselors
25 for a couple of years -- Supv CC #1 maybe for three,

□00147

1 Supv CC #2 for two or three -- and so they -- we felt and
2 told them to make sure the counselors were in the
3 water with the children and that they -- it was their
4 responsibility to make sure that the counselors
5 didn't horseplay with each other or -- and
6 interacted. It wasn't all -- it wasn't always just
7 that -- it was to -- it was to make sure that the
8 children were having fun, that the counselors
9 interacted with the children and that the counselors
10 didn't horseplay or whatever. And that if there was
11 an incident or anything like that, they were the ones
12 that would respond.

13 Q. Okay. Well, most of that you would tell the
14 counselors, too, right? Interact with the children?

15 A. Sure.

16 Q. Watch the children?

17 A. Yes.

18 Q. Was there any specific training given to the
19 supervising counselors that's different from the
20 training given the counselors?

21 A. They would meet with CD specifically
22 each day before they were sent off to their location,
23 which was the pool that day.

24 Q. To give them updates, let them know where
25 they're supposed to be, et cetera, right?

□00148

1 A. And a schedule, who's coming, how many
2 groups are going to be there, what -- if there was
3 anybody that -- say, a child could not get -- had an
4 earache or whatever, could not get in the water, he
5 would be -- those supervisors --

6 Q. Sure.

7 A. -- would be assigned to that.

8 Q. But was there any specific training given

9 the counselor supervisors on how exactly to supervise
10 counselors, specific training on how to do that or
11 not?

12 A. We certainly considered it training,
13 briefing it when we instructed. These are your --
14 these are your supervisors for the day. Their word
15 is law over there. They're what -- I considered that
16 training. There wasn't -- there wasn't anything in
17 writing that said you're different from this because
18 of this or that. It was meetings with CD ,
19 briefing on the day's activities and notifying or
20 alerting the other counselors who your supervising
21 counselors would be at the pool or wherever that they
22 might be that day.

23 Q. Would there be anything else that would be
24 encompassed within the training given the counselor
25 supervisors other than what you just testified to?

□00149

1 A. Specific training or -- we would -- things
2 you would consider -- we considered their experience
3 as campers -- I mean, as counselors as part of that,
4 but...

5 Q. Not what you would consider to make them a
6 supervisor, but training you would specifically give
7 them.

8 A. I may not understand what you're saying.

9 Q. That's what my question was. Do you give
10 any specific training to the counselor supervisors on
11 how to supervise the other counselors or not?

12 A. Yeah. CD and I would, both.

13 Q. Okay.

14 A. We would both do that, sure.

15 Q. So tell me what the --

16 A. I see what you're saying.

17 Q. -- training consisted of --

18 A. Okay.

19 Q. -- that you gave to the supervising
20 counselors.

21 A. It would be a lecture or a discussion on not
22 to get bullied by other counselors. You know,
23 stay -- what you -- we are sending you over there as
24 the authority, so what you say, if the counselors
25 don't respect that, then they would -- they would

□00150

1 come and get CD or I or even report to Guillermo
2 if he was at the pool, saying these counselors are

3 horseplaying and they are not listening to me. So
4 there would be lectures along those lines discussing
5 how to deal with the other counselors. Make sure
6 that your kids are being interacted with. Don't let
7 the counselor suddenly be consumed with each other.
8 Make sure that -- the whole time you're there that
9 you're watching the other counselors play with the
10 kids, interact so that they are all having a good
11 time and that they are safe. It would be -- it would
12 be -- it would be lectures like that.

13 Q. Okay. Anything in writing?

14 A. No, sir. I don't think so, not from me.

15 Q. Okay. And anything else that you haven't
16 testified to so far that would be included in the
17 training giving -- given to counselor supervisors?

18 A. I would want to visit with CD just to
19 make sure that I'm not -- and I could be forgetting
20 or some -- overlooking something that she had done,
21 but --

22 Q. Anything else you can think of?

23 A. No, nothing I can.

24 Q. Okay. And who was responsible to make sure
25 that the counselor supervisors were doing -- were

□00151

1 doing their job adequately on a day-to-day basis
2 during a summer camp?

3 A. If they were located at the pool, that would
4 be myself or Mr. Palmer certainly had the authority
5 to say -- to report to me that the supervisors
6 weren't supervising. But I was at the pool several
7 times from 9:00 to 1:00 -- from 9:30-ish to
8 when the kids start leaving the pool to get ready for
9 car pool, I would be at the pool at least every
10 30 minutes or so. And so, I would see that or CD
11 by no means was always stationed at the house. She
12 could certainly go to the pool.

13 Q. But who was given that specific task to
14 watch your campers -- excuse me -- your counselors,
15 your counselor's supervisors to make sure they were
16 doing their job? Whose specific responsibility is
17 that?

18 A. Oh, that would -- that would be mine, mine
19 and CD's.

20 Q. And who was watching the camp counselor
21 supervisors on July 18th, the morning of July 18th,
22 2007?

23 A. I had seen -- I guess me. I had seen -- I
24 don't know if CD went over there or not that
25 morning. I had been there at least two or three

□00152

1 times and had seen both of them. I may have even
2 spoken to both of them that day at the pool -- at the
3 pool area.

4 Q. And looking at Exhibit 14 again, now you
5 were present during Mr. Griffin's testimony about the
6 presence on occasion, especially during particularly
7 busy days of summer camp, there might be a lifeguard
8 chair on the west end of the pool, which would be
9 directly overlooking the area where John Pluchinsky
10 was found floating in the water, weren't you? Were
11 you here for that testimony?

12 A. Yes, sir.

13 Q. Okay. Had you also -- well, I guess you
14 would since you watch your counselors from time to
15 time and you were at the family pool from time to
16 time each day, you also would see from time to time a
17 lifeguard chair on the west end of the pool, correct?

18 A. I can't remember a time that there was a
19 chair at that west end except for late 2005 during
20 our -- and that's not to say that there wasn't ever a
21 chair there. Late 2005 that we had three -- and I'm
22 not even sure if it was at all three of those, that
23 location when our grand opening -- our grand opening
24 weekends we had. I know that one day -- and I'm not
25 sure that it was a guard sitting there, we had a

□00153

1 couple of just extra eyes is what we called them or
2 gate guards.

3 Q. Okay. Okay. But you think that in late
4 2005 during that grand opening there was a lifeguard
5 chair sitting there?

6 A. For those parties where we expected in the
7 excess of 200 people, I don't -- but I can't -- I
8 can't say for sure that there was a chair put there.

9 Q. Would it surprise you if other people have
10 said that there was a third chair on the west end
11 immediately when those pools opened?

12 MR. SNYDER: Objection, form.

13 Q. (BY MR. MARRS) Would that surprise you?

14 A. Yes, it would surprise me.

15 Q. Why?

16 MR. SNYDER: Objection, form.

17 Q. (BY MR. MARRS) Grand opening day there
18 might have been, correct?
19 A. Yes.
20 Q. Were any people in the family pool on grand
21 opening day?
22 A. Uh-huh.
23 Q. How many?
24 A. Steve may have specific numbers, but a lot.
25 Q. Approximately how many children?
□00154
1 A. Over 200 -- oh, I'm sorry. Did you say
2 children? Not -- there weren't 200 children, but we
3 had over 200 people that day at the pool.
4 Q. Right. But I mean at any given time on
5 opening day in the family pool, how many children do
6 you think might be -- might have been in the pool?
7 A. I can't -- I don't even know how to
8 speculate on that.
9 Q. I mean, approximately?
10 MR. SNYDER: Objection, form.
11 Q. (BY MR. MARRS) A handful, 15, 20, how many?
12 MR. SNYDER: Objection, form.
13 A. I would say more than that.
14 Q. (BY MR. MARRS) 30?
15 A. I don't know. Maybe -- see, now you're --
16 Q. 40?
17 A. I'm just giving you numbers. We could just
18 make a number up.
19 Q. Right.
20 A. I just --
21 Q. But ball park?
22 MR. SNYDER: Objection, form.
23 Q. (BY MR. MARRS) What would you -- What would
24 you consider to be busy for the family pool in terms
25 of young children in the pool, as camp director?
□00155
1 A. During camp?
2 Q. Sure.
3 A. In the family pool?
4 Q. Yes, sir.
5 A. Probably -- children?
6 Q. Yes, sir.
7 A. Little campers?
8 Q. Right.
9 A. Well, if the slide was going -- see, I'm not
10 a lifeguard.

11 Q. Two full groups, 20?
12 A. Two full -- two full groups maybe in the
13 west end and then whatever is on the slide because
14 that's normally --
15 Q. Right.
16 A. -- just one person at a time.
17 Q. So if the slide is going and there are
18 26 four-year olds in that pool at the same time, that
19 would be busy, wouldn't it?
20 A. I would consider that medium.
21 Q. Medium busy?
22 A. Medium busy, yeah. Now, okay -- can I --
23 Q. Sure.
24 A. I would consider that 26 kids and no
25 counselors, I would -- I would consider that very

□00156

1 busy. 26 children with 10 counselors, that would be
2 medium.
3 Q. Are the lifeguards responsible for watching
4 anyone and everyone that's in the pool --
5 A. Yes.
6 Q. -- regardless of whether they are children
7 or counselors?
8 A. Yes.
9 Q. So, if you have 26 four-year olds playing
10 all over that pool, the slide going and an additional
11 some eight counselors in the pool, that would be very
12 busy for a -- for two 15-year-old lifeguards to keep
13 up with, wouldn't it?
14 MR. SNYDER: Objection, form.
15 A. I --
16 Q. (BY MR. MARRS) Would you imagine it would
17 be or not, as camp director?
18 A. I don't think so.
19 MR. SNYDER: Objection, form.
20 A. I don't think -- and I can't really speak
21 for the two that we're referring to, I guess, 15 y/o LG #1
22 and 15 y/o LG #2 .
23 Q. (BY MR. MARRS) Do you think it would be
24 very busy for one 15-year-old lifeguard to keep up
25 with?

□00157

1 MR. SNYDER: Objection, form.
2 A. No, not under the -- not under those
3 circumstances with --
4 Q. (BY MR. MARRS) Not with the slide going,

5 26 four-year olds and eight counselors in the pool, a
6 15-year-old girl responsible to watch all of those
7 people, you don't think that that would be pretty
8 busy for a 15-year-old girl to keep up with?

9 MR. SNYDER: Objection, form.

10 Q. (BY MR. MARRS) Or do -- You just don't have
11 an opinion on that?

12 MR. SNYDER: Objection, form.

13 A. I really can't -- I don't want to really
14 speak for 15 y/o LG #1, I mean --

15 Q. (BY MR. MARRS) Okay.

16 A. I don't know how she felt about that.

17 Q. So, do you have an opinion on that or not?

18 A. No, I really don't.

19 Q. Who was there as an adult in the pool
20 supervising John Pluchinsky at the time he drowned or
21 do you not know?

22 A. John specifically? There were two adults
23 there watching the counselors.

24 Q. I'm not asking you if an adult was assigned
25 to watch any particular child. I'm asking you if an

□00158

1 adult was watching John at the time he drowned. Do
2 you know?

3 A. I don't know who was watching John.

4 Q. If no one was watching John at the time he
5 drowned, whose failing would that be?

6 MR. SNYDER: Objection, form.

7 A. I don't know if anybody was watching John --

8 Q. (BY MR. MARRS) And if no one --

9 A. -- when he drowned.

10 Q. If no one was watching John when he drowned,
11 whose failing would that be?

12 MR. SNYDER: Objection, form.

13 A. I'm sorry, Mr. Marrs, would you repeat that
14 one more time for me to just make sure I understand?

15 Q. (BY MR. MARRS) If John Pluchinsky drowned
16 because no one was watching him, whose failure would
17 that be?

18 MR. SNYDER: Objection, form.

19 A. In that circumstance, I really can't say
20 whose fault that would be.

21 Q. (BY MR. MARRS) Because what?

22 A. Because I don't know that -- who was
23 watching or if anybody or when John drowned or how or
24 why or anything.

25 Q. Well, the reason why you can't specifically
□00159

1 assign any blame is because no one was specifically
2 assigned to even watch him, correct?

3 MR. SNYDER: Objection, form.

4 A. Our whole group, the whole -- all six
5 counselors were assigned to watch all the kids. No
6 one was specifically assigned -- none of those six
7 counselors were in the boys -- in John's group was
8 specifically assigned to watch any one individual.

9 Q. (BY MR. MARRS) Would it be the failing then
10 in your opinion of all six of the counselors if he
11 was not being watched when he drowned?

12 MR. SNYDER: Objection, form.

13 A. I just wouldn't -- I just can't assign blame
14 because I don't know when or what happened to John.

15 Q. (BY MR. MARRS) And if none of them were
16 watching John at the time he drowned, would it be the
17 failing of all six of them, in your opinion, because
18 no one was watching him?

19 MR. SNYDER: Objection, form.

20 Q. (BY MR. MARRS) If that were the case?

21 MR. SNYDER: Objection, form.

22 A. I just don't think -- or I just don't know
23 if that was case, I don't.

24 Q. (BY MR. MARRS) So even if it's true, just
25 assuming it's true, even if John was not being

□00160

1 watched by anyone at the time he drowned, you still
2 can't say that anyone is at fault for that, correct?

3 MR. SNYDER: Objection, form.

4 Q. (BY MR. MARRS) Is that what you're --

5 A. No, sir. I would just -- before I would
6 assign blame, I would like to know if there is blame.

7 Q. And the only people that can answer who was
8 watching John are the counselors themselves, right?
9 Because they were the ones who were given the
10 authority to decide specifically which child they
11 would watch, correct, sir?

12 MR. SNYDER: Objection, form.

13 A. Yes. It would only be the counselors who
14 would know who was watching John.

15 Q. (BY MR. MARRS) Who were they given the
16 authority to make that decision by? The counselors
17 were given the authority to decide among themselves
18 which particular children they would watch by who?

19 Would it be yourself?

20 MR. SNYDER: Objection, form.

21 A. I'm not sure that's an authority that CD
22 or I would give them. When you're assigned to watch
23 all 13 children, make sure they're having fun and
24 play and you must interact with the children. If
25 they go to the pool for -- during their swim time,

□00161

1 you must be in the water with them. I don't think
2 there is authority, okay, you have the authority to
3 divide up and pick who you want. We would -- we
4 never -- no, we never said that.

5 Q. (BY MR. MARRS) Well, you must -- you must
6 concede that either someone was watching John at the
7 time he drowned or no one was watching John at the
8 time he drowned. It has to be one or the other;
9 don't you agree with that?

10 MR. SNYDER: Objection, form.

11 A. No, sir, not necessarily because I don't
12 know exactly when -- I don't know when John drowned.
13 I mean, a lifeguard could be -- I don't know who was
14 watching John at --

15 Q. (BY MR. MARRS) And if no one -- if no one
16 that was in the pool knows when John drowned, that
17 means no one was watching him. Isn't that common
18 sense?

19 MR. SNYDER: Objection, form.

20 Q. (BY MR. MARRS) Tell the jury if you don't
21 think that's common sense.

22 MR. SNYDER: Objection, form.

23 A. I just think you should -- I just think no
24 one knows when John drowned and so...

25 Q. (BY MR. MARRS) Who was watching him five

□00162

1 minutes before he drowned?

2 A. Five minutes before, I haven't seen a report
3 that indicated that.

4 Q. Who was watching him five minutes before he
5 was discovered floating facedown in the water?

6 A. I haven't seen any report that indicated
7 that within five minutes from when 15 y/o LG #1 -- when
8 Ms. 15 y/o LG #1 saw John, that anybody had seen him within
9 five minutes of that.

10 Q. You know of no facts indicating that anyone
11 saw John Pluchinsky five minutes before he was
12 discovered floating in the water, correct?

13 A. No, sir. I've seen -- I've seen nothing on
14 that.
15 Q. Is that correct?
16 A. Yes. I'm sorry, that's correct.
17 Q. So you must concede that either no one saw
18 John Pluchinsky during the five minutes before he was
19 discovered floating in the water or even a greater
20 amount of time or someone did see him during that
21 time. It's one or the other, isn't it, sir?
22 MR. SNYDER: Objection, form.
23 Q. (BY MR. MARRS) Are you going to deny that
24 obvious fact?
25 MR. SNYDER: Objection, form.

□00163

1 A. It's just -- I just don't think that's a
2 fact because many people could have seen -- many
3 people could have seen John and not -- and not -- the
4 lifeguard could have seen John and not realized --
5 15 y/o LG #1 wasn't with him, didn't know him as a -- as a
6 camper, so I cannot say that anybody saw him within
7 five minutes or if someone did see him within five
8 minutes.
9 Q. (BY MR. MARRS) What facts is the Racquet
10 Club aware of that anyone saw John Pluchinsky nine
11 minutes, any time nine minutes before he was
12 discovered floating in the water?
13 A. I haven't -- I haven't seen any of -- any of
14 the reports that I've read, which are CPS, my own and
15 Officer Beverage's -- Beverage, I have seen nothing
16 that indicates within -- the nine minute -- the
17 nine-minute word is there.
18 Q. Okay. You know of no facts that anyone saw
19 John Pluchinsky within nine minutes before he was
20 found floating facedown in the water?
21 A. No, sir.
22 MR. SNYDER: Objection, form.
23 Q. (BY MR. MARRS) Correct? Correct?
24 A. Correct, yeah.
25 MR. SNYDER: We've been going about an

□00164

1 hour. Let's take a little break.
2 MR. MARRS: I was just getting
3 started. That's fine. That's fine.
4 VIDEOGRAPHER: Off the record. The
5 time is 4:18 p.m.
6 (Brief recess.)

7 VIDEOGRAPHER: The time is 4:38 p.m.

8 MR. MARRS: Do you want to mike up in
9 case you have some important objections to make?

10 MR. SNYDER: They are all important.

11 Q. (BY MR. MARRS) Anything you want to change
12 about your testimony now that you've taken a break?

13 A. In reference to?

14 Q. Anything.

15 A. Just anything?

16 Q. Do you want to change your testimony you've
17 given under oath so far?

18 A. Just -- I would like to add if I -- if I
19 might be able to. You had asked if I knew anything
20 to contradict Ms. CM #1 . I had also -- a member
21 had visited with me, Ms. M #6 (phonetic) -- I
22 can't think of her name -- she came and visited with
23 me.

24 Q. Yes, sir.

25 A. And she and her child were in the pool at

□00165

1 the time of the incident, she said. And she --

2 Q. Oh, there was an additional mom and child
3 other than M #1 in the family pool?

4 A. And that was Ms. M #6 , I think.

5 Q. Oh, okay. Let's add that to the number that
6 we had. Let's see, we had about 44, so now we know
7 that there were about 46 people in the pool on the
8 day that John Pluchinsky drowned, correct?

9 MR. SNYDER: Objection, form.

10 Q. (BY MR. MARRS) If there were an additional
11 two, right, sir?

12 MR. SNYDER: Objection, form.

13 A. Well, I don't -- I don't agree with those
14 numbers, I guess.

15 Q. (BY MR. MARRS) So go on.

16 A. Okay. No, that was all. I just forgot.

17 Q. Okay.

18 A. You had asked that.

19 Q. Well, let me visit with you about some
20 things you might know about, including Exhibit
21 Number 18, which is summer camp registration form.
22 Okay? Do you recognize Exhibit Number 18?

23 A. Yes, sir.

24 Q. Tell the jury what that form is.

25 A. That -- it's probably the 2007. I don't see

□00166

1 the date, but it looks -- that's probably the summer
2 camp registration form from the summer.

3 Q. Okay. For summer 2007?

4 A. I think. I don't see the date, but I think
5 that's it.

6 MR. PLETCHER: Okay. Let me -- Let me
7 zoom in.

8 A. Oh, there it is at the bottom. Yeah, I see
9 where down the scissors are.

10 Q. (BY MR. MARRS) Did you provide that
11 registration form for members and non-members that
12 may be interested in signing their children up for
13 2007 summer camp?

14 A. That is the registration form that we
15 received to enlist their -- the campers in our camp.

16 Q. Okay. Well, it's not that you received,
17 it's the registration form that you, your club
18 drafted and presented either on your web site or
19 otherwise for those that might want to sign up for
20 your summer camp, correct?

21 A. Yes, sir.

22 Q. Whether or not they were members, correct?

23 A. Yes, sir.

24 Q. And on that form, it talks about the
25 different weeks that you're offering summer camp,

□00167

1 correct?

2 A. Yes.

3 Q. And it indicates that the summer camp is
4 appropriate for children as young as four-years old,
5 correct?

6 A. Yes.

7 Q. Now, why did the Racquet Club allow
8 four-years olds as campers in its 2007 summer camp?

9 A. Our camp provides from four up to 12.
10 That's just one of the -- one of the -- one of the
11 ages, like five or six. It's just where we start and
12 12 is where we --

13 Q. Who made the decision that the 2007 summer
14 camp at the Racquet Club was appropriate for
15 four-year olds?

16 A. I guess Steve and I decided -- just carried
17 over our -- carried over what we had done the
18 previous year.

19 Q. Did the running of your summer camp
20 including for four-year olds change at all after the

21 construction of your new family pool?

22 A. I can't be sure. I don't think so.

23 Q. And so, did you and Mr. Griffin have any

24 specific discussion about whether or not your club's

25 summer camp for 2007 was appropriate for four-year

□00168

1 olds?

2 A. No. Steve and I wouldn't have discussed

3 that. I probably just approached him and said -- I

4 updated the date and stuff like that.

5 Q. Okay.

6 A. It wouldn't have been something we sat down

7 and he -- he may have gone, "Are you going to do mad

8 science this year?" We may have talked of that, but

9 nothing specific on do we want to eliminate four-year

10 olds or increase to 14-year olds or anything like

11 that.

12 Q. Well obviously, someone made a decision that

13 there would be a cut-off at some minimum age,

14 correct? I mean, someone made the decision that it

15 would be this range as young as four and as old as

16 12?

17 A. Yeah.

18 Q. Or it wouldn't be on your form, correct?

19 A. Right.

20 Q. Who made that decision, to your knowledge?

21 Do you know?

22 A. I guess -- I guess -- I guess I did. I

23 mean, we just rolled it over.

24 Q. Okay. And what evaluation did you do or

25 analysis of the pool area, the safety procedures,

□00169

1 et cetera, the characteristics of a typical

2 four-year old did you do in order to determine that

3 your family pool was safe for children as young as

4 four-years old, if any?

5 MR. SNYDER: Objection, form.

6 A. I don't think we did anything specific to

7 any age group to say 2006 or 2007 that said it's --

8 we need to look at this now for any one certain age

9 group. I think we just -- from our old pool to our

10 new pool, we just rolled over the --

11 Q. Okay.

12 A. -- the registration mark. And that would

13 have -- that would have been me. Steve, I -- I would

14 have mentioned to him. I said, "I'm going to roll

15 this over." It wouldn't have been something I said,
16 "Is that okay?" or I mean --

17 Q. Okay.

18 A. I mean, and he could have certainly -- he or
19 my two -- my two bosses could have certainly said,
20 "Let's discuss this", but it wasn't in 2006 or 2007.

21 Q. Okay. So, to your knowledge in 2006, 2007
22 or any year, no one at the Racquet Club did any
23 specific analysis or determination that the 2007
24 summer camp or any previous camp was safe
25 specifically for children as young as four-year olds,

□00170

1 correct?

2 MR. SNYDER: Objection, form.

3 Q. (BY MR. MARRS) There was no specific
4 analysis or evaluation to make any such determination
5 as it related to children as young as four-years old;
6 is that right?

7 MR. SNYDER: Objection, form.

8 A. No, sir, not to my knowledge.

9 Q. (BY MR. MARRS) And it says here asterisk,
10 with respect to four-year olds. "4 year olds are
11 limited to 13 boys and 13 girls per week." Why was
12 it important to limit the number of children who were
13 specifically four-years old?

14 A. One, they are still very little. Two, they
15 are very -- they are very slow. Every program --
16 every program you -- every program you do takes a
17 long time just getting their shoes on if they've been
18 at the pool, to get them to the next place. It's
19 not -- that's why we limit that to 13. That just
20 seemed a number and we had enough counselors that we
21 would always put a good ratio with that and -- to
22 help it -- help it along.

23 Q. One reason why you limit the number of
24 children as young as four-years old is because you,
25 like any parent knows, four-years old --

□00171

1 four-year-old children require more supervision than
2 children that are five, six, seven, eight, correct?

3 A. Yes.

4 Q. So, you want to limit it so that you'll be
5 sure that they have sufficient supervision; isn't
6 that why?

7 MR. SNYDER: Objection, form.

8 Q. (BY MR. MARRS) One of the reasons why?

9 A. That would be a reason.

10 Q. And who made the determination that the
11 13-year olds should be limited to a given number --
12 excuse me.

13 A. The four-year olds limited to 13?

14 Q. Let me ask that again. Can I?

15 A. Sure.

16 MR. SNYDER: Can you?

17 MR. MARRS: Not now.

18 Q. (BY MR. MARRS) Who made the decision that
19 there would be a limit, a specific limit on the
20 number of four-year olds allowed in the summer camp?

21 A. I guess it would be me ultimately.

22 Q. Okay. And so what was that based on, that
23 specific limit of 13 boys and 13 girls that were
24 four-years old?

25 A. I don't remember. I don't know. It's just

□00172

1 a number we all -- at some point we must have done
2 that, but I don't know.

3 Q. How many girls four-years old were in the
4 summer camp 2007 during week five, the same week that
5 John Pluchinsky was in the pool?

6 A. 13, I think.

7 Q. How many girls that were four-years old were
8 in the pool at the time John Pluchinsky were in the
9 pool? Could it have been more than 13?

10 A. I don't know.

11 Q. Do you ever participate in board meetings?

12 A. No, sir.

13 Q. Has anyone discussed with you whether or not
14 at any time it's appropriate to have four-year olds
15 in your summer camp?

16 A. Not to my knowledge.

17 MR. SNYDER: Objection, form.

18 Q. (BY MR. MARRS) Has any parent come to you
19 and said, "You know, I don't think you should be
20 having four-year olds in your summer camp"?

21 A. No, sir.

22 Q. Did anyone, to your knowledge, check with
23 the CPS Family Protective Services to see if
24 four-year olds should be in your summer camp?

25 A. No, sir.

□00173

1 Q. And so, for how many years prior to 2007 did
2 the Houston Racquet Club allow children as young as

3 four to participate in your summer camps?

4 A. I don't know.

5 Q. Did they allow it in 2006?

6 A. Yes, sir.

7 Q. 2005?

8 A. Yes.

9 Q. 2004?

10 A. Yes.

11 Q. 2003?

12 A. Yes, sir.

13 Q. 2002?

14 A. Yes, sir.

15 Q. 2001?

16 A. Yes, sir.

17 Q. 2000?

18 A. Yes, sir.

19 Q. 1999?

20 A. Yes, sir.

21 Q. 1998?

22 A. Yes, sir.

23 Q. 1997?

24 A. Yes.

25 Q. 1996?

□00174

1 A. I don't know.

2 Q. 1995?

3 A. I just have to --

4 Q. Okay.

5 A. I guess we would have to --

6 Q. So we know that at least for a decade the

7 Houston Racquet Club has allowed children as young as

8 four to participate in its summer camp, correct?

9 A. Yes, sir.

10 Q. And how about, have they ever allowed

11 children that were under four to participate in their

12 summer camp, to your knowledge, for the last decade?

13 A. Not to my knowledge.

14 Q. Why not?

15 A. I don't know.

16 Q. Who's in charge over there of the summer

17 camp?

18 A. The -- I am.

19 Q. Because I've heard a lot of "I don't knows"

20 today about the summer camp when you're supposed to

21 be the man in charge of the summer camp. You don't

22 know who was watching John Pluchinsky. You don't

23 know that there was anyone watching John Pluchinsky.
24 You don't know that any particular person was
25 assigned to watch John Pluchinsky.

□00175

1 Who -- If you don't know, who in the
2 world is this family going to turn to get answers in
3 this case?

4 MR. SNYDER: Objection, form.

5 Don't answer that.

6 Q. (BY MR. MARRS) Is your answer the same with
7 respect to the limitation of 13 four-year-old boys
8 and 13 four-year-old girls for summer camp? Is it
9 your testimony also that for the last decade you've
10 had this same limitation on the number of
11 four-year olds?

12 A. I'd want to try to find out and see if we
13 didn't lower or raise or keep it the same -- I'm...

14 Q. Okay. Was your 2007 summer camp appropriate
15 for four-year-old children?

16 A. Yes, I think so.

17 Q. But you know that at least one governmental
18 agency disagrees with you, don't they?

19 MR. SNYDER: Objection, form.

20 A. Well, we didn't -- we didn't have a license
21 that we were required to have.

22 Q. (BY MR. MARRS) They say that you were
23 running an illegal day care facility because you
24 allowed four-year olds in that day care facility and
25 weren't following the rules, CPS Family Protective

□00176

1 Service rules, correct, sir?

2 A. Yes, sir.

3 Q. Now, under "Program" it says, (reading)
4 Activities including swimming in our two new pools
5 with a two-story slide, paren, basic stroke --
6 comma -- water games -- comma -- free play, end
7 paren, with adult supervision. What does that mean,
8 adult supervision?

9 A. That we would send like Supv CC #1 or
10 Supv CC #2 to the pool as pool supervisors to watch
11 the counselors.

12 Q. It means you would have adult supervision by
13 adults that were -- What's an adult mean to you, what
14 age minimum?

15 A. 18.

16 Q. Supervising the children at all times? Is

17 that what that means, while they are in the water?

18 A. No. I don't -- I don't think we meant that.

19 Q. Okay. So when you say, "with adult
20 supervision," you mean well, not really. Sometimes
21 we'd have adult supervision; sometimes we wouldn't
22 for your children if you entrust them to us in the
23 2007 summer camp?

24 MR. SNYDER: Objection, form.

25 A. No. I meant we would send adult supervision
□00177

1 over there to watch our counselors. I meant that.

2 Q. (BY MR. MARRS) It doesn't say that your
3 counselors would be supervised by an adult. It's
4 saying your kid is going to have adult supervision.
5 That's what this form means, isn't it? Aren't you
6 telling parents who might enroll their children that
7 they'll have adult supervision?

8 A. No, I don't think so.

9 Q. Okay. Let me clarify then. You're telling
10 the jury that when the Racquet Club says in its form
11 that there are activities with adult supervision,
12 you're saying that, oh, well, your child might not
13 have adult supervision. We're just talking about the
14 supervisors might have adult supervision; is that
15 correct?

16 MR. SNYDER: Objection, form.

17 A. No. I'm not specifying anything on that.

18 MR. PLETCHER: Read it again.

19 Q. (BY MR. MARRS) Okay. So, "Program."
20 "Activities including" -- and it talks about
21 activities with adult supervision. And your
22 testimony is that you were not saying that the child
23 that is signed up will have adult supervision; is
24 that correct? Is that what you're saying?

25 MR. SNYDER: Objection, form.

□00178

1 A. No. That we do have adult supervision.

2 Q. (BY MR. MARRS) For the children?

3 A. For the camp, I guess. For the camp at the
4 pool.

5 Q. A parent reading this has every reason to
6 believe that you are representing that its child that
7 is signed up for 2007 summer camp will have adult
8 supervision; don't you agree?

9 MR. SNYDER: Objection, form.

10 A. I couldn't speak to what each adult --

11 parent who reads that would think.

12 Q. (BY MR. MARRS) You are the head of this
13 2007 summer camp. Are you telling me that you and
14 your club did not represent to parents that their
15 children enrolled in 2007 summer camp would have
16 adult supervision, yes or no?

17 A. We did have adult supervision at our pool
18 and at our camp house.

19 Q. And I'm talking about this form. Is it a
20 reasonable reading of this form that if you sign your
21 kid up, they will have adult supervision?

22 A. I just don't see it that way. That's not
23 how we -- that's not how I worded it.

24 Q. You're a parent, aren't you?

25 A. Yes.

□00179

1 Q. Are you saying that if Kathleen Pluchinsky,
2 in reading this form, interprets it that way, that
3 that's an unreasonable interpretation of your form or
4 not?

5 MR. SNYDER: Objection, form.

6 A. How did she interpret it?

7 Q. (BY MR. MARRS) That the activities with
8 adult supervision means if you sign your kid up for
9 these activities, they'll have adult supervision; is
10 that a reasonable reading of your form or not?

11 MR. SNYDER: Objection, form.

12 A. I'm not sure how anybody would -- other than
13 how I wrote it, would understand it.

14 Q. (BY MR. MARRS) Who was involved in drafting
15 this form?

16 A. I would -- if I made it, it would be me. I
17 mean, that is a form --

18 Q. Okay.

19 A. -- that we have just rolled over.

20 Q. Who are you saying is going to have adult
21 supervision when you use words "adult supervision" in
22 describing the child program that you are describing?

23 A. Our camp will have adult supervision, is
24 what I meant by that statement right there.

25 Q. And there -- your camp consists of campers,

□00180

1 correct?

2 A. Right.

3 Q. And this is a sign-up form for campers,
4 correct?

5 A. Right, yes.

6 Q. And aren't you saying the campers will have
7 adult supervision?

8 A. Yes.

9 Q. And it's reasonable for Kathleen Pluchinsky
10 in seeing this form to believe that her camper, John
11 Pluchinsky, would have adult supervision, isn't it?

12 A. I'm not sure what Ms. Pluchinsky would --

13 Q. But isn't that a reasonable reading?

14 A. Not if she thought that. No, not to me. I
15 mean, she -- no.

16 Q. When you say "adult supervision," do you
17 mean that we're just going to have a first time
18 15-year-old lifeguard responsible for scanning the
19 entire pool that we're going to put your camper in?

20 MR. SNYDER: Objection.

21 Q. (BY MR. MARRS) Do you think that's a
22 reasonable reading of this form?

23 MR. SNYDER: Objection, form.

24 A. No.

25 Q. (BY MR. MARRS) No, because you say "adult
□00181

1 supervision" and that means someone supervising the
2 children that is at least 18-years old. Is that what
3 it means to you?

4 A. Yes, that there will be adult supervisors at
5 that pool.

6 Q. While John Pluchinsky is in that pool,
7 correct, the camper?

8 A. Anytime that we have campers in there, there
9 will be adult supervision at the pool.

10 Q. Okay. And who were the adult supervisors at
11 the pool when John Pluchinsky was in the pool?

12 A. On July 18th it was Supv CC #1 and
13 Supv CC #2.

14 Q. Did they see him drown?

15 A. I don't know.

16 Q. You have no facts to indicate that either
17 Supv CC #1 or Supv CC #2 were watching John
18 Pluchinsky when he drowned, do you?

19 A. I have no -- I have seen no statement
20 written by either of those boys, either of those
21 young guys -- young men who said that.

22 Q. So the answer is correct, right, sir? You
23 have no facts indicating that either of those kids
24 saw John Pluchinsky or was watching him when he

25 drowned, do you?

□00182

1 MR. SNYDER: Objection, form.

2 A. I've seen no statements that -- from those
3 three departments, which I've had access to look at
4 that say that, that Supv CC #1 knew.

5 Q. (BY MR. MARRS) You've seen no evidence
6 whatsoever to indicate that, have you?

7 MR. SNYDER: Objection, form.

8 A. No.

9 Q. (BY MR. MARRS) Statements or otherwise,
10 correct?

11 A. Correct.

12 Q. Now, you go on to say, "On-duty lifeguard
13 with safety instructions." What do you mean by "with
14 safety instructions"?

15 A. That they're certified by the Red Cross or
16 whatever lifeguard certification that they have.

17 Q. Okay. Was LG Supv validly and
18 currently certified in CPR as of the time that John
19 Pluchinsky was in the pool on July 18th, 2007?

20 A. I don't think so.

21 Q. Was LP LG a lifeguard at the
22 Racquet Club --

23 A. Yes.

24 Q. -- validly certified for CPR at the time
25 that John Pluchinsky was in the pool on July 18th?

□00183

1 A. No, I don't think she was certified.

2 Q. Was Sr LG #1, Supv CC #1 or
3 Sr LG #3 validly certified in CPR when John Pluchinsky
4 was in the family pool on July 18th, 2007?

5 A. I think their certifications had just run
6 out, too on the -- on the CPR.

7 Q. In other words, they did not have valid and
8 current certifications for CPR at the time John
9 Pluchinsky was in the pool, correct, sir?

10 A. That's correct.

11 MR. SNYDER: Objection, form.

12 Q. (BY MR. MARRS) As a matter of fact, you
13 know for a fact that two of those individuals
14 actually performed CPR on John at a time when they
15 were not validly and currently certified to perform
16 CPR, correct?

17 MR. SNYDER: Objection, form.

18 Q. (BY MR. MARRS) We went over that yesterday,

19 didn't we?

20 A. Yes.

21 Q. And that's true, isn't it?

22 A. Their -- they were not valid when they --
23 when John -- when they did CPR.

24 Q. And when you say "safety instructions,"
25 aren't you implying that they have been properly

□00184

1 instructed on all safety matters they need to know to
2 protect the children in their pools? Isn't that what
3 you're saying?

4 A. That they're --

5 MR. SNYDER: Objection, form.

6 Q. (BY MR. MARRS) Go ahead. I'm sorry.

7 A. I'm -- say that again, please. I'm sorry.

8 Q. It's very difficult for me to say all over
9 again.

10 Aren't you saying when you're saying
11 that the lifeguards will have safety instructions
12 that they will have all the instructions that they
13 need to safely protect the children that they are
14 protecting in the pool?

15 MR. SNYDER: Objection, form.

16 A. Yes. I'm saying that the lifeguards would
17 have their certification, that there would be
18 licensed lifeguards.

19 Q. (BY MR. MARRS) And would have valid and
20 proper and current CPR certifications as you've
21 already testified. And what else? What else do you
22 mean when you say "with safety instructions"?

23 A. That they've been instructed as lifeguards,
24 that they know how to be lifeguards.

25 Q. Okay. What you are really saying is you're

□00185

1 telling the parents that "our pool is going to be
2 safe for your children", aren't you? Isn't that
3 really the gist of what you're saying in this form?

4 A. They will have lifeguards at the pool that
5 are certified lifeguards.

6 Q. And that -- And that your children will be
7 safe in our pools. Isn't that what you mean by we'll
8 have lifeguards, safety instructions? Aren't you
9 telling them their children will be safe?

10 MR. SNYDER: Objection, form.

11 A. Really, I'm just saying -- I mean, I'm
12 saying exactly what I said. I --

13 Q. (BY MR. MARRS) Is it your opinion that when
14 a kid signs up for your 2007 summer camp, that they
15 won't be safe?

16 MR. SNYDER: Objection, form.

17 A. Oh, we felt our camp is very safe -- is
18 safe.

19 Q. (BY MR. MARRS) Yes, sir. And when you're
20 telling them, your kid will have adult supervision,
21 on-duty lifeguard with safety instructions, all
22 counselors will be CPR certified, you're telling them
23 that this is a safe place for your children, aren't
24 you?

25 A. Yes.

□00186

1 Q. And when you say, all counselors will be CPR
2 certified, you know that that statement turned out to
3 be untrue, at least as it relates to July 18th, 2007,
4 don't you?

5 MR. SNYDER: Objection, form.

6 Q. (BY MR. MARRS) We've already talked about
7 that, haven't we?

8 MR. SNYDER: Objection, form.

9 A. They weren't -- there were several that
10 weren't certified. Several of the lifeguards
11 weren't, yes.

12 Q. (BY MR. MARRS) And several of the
13 counselors were not CPR certified, correct?

14 MR. SNYDER: Objection, form.

15 A. I'm not sure. I know Supv CC #1 was both.

16 Q. (BY MR. MARRS) Supv CC #1 served as a counselor
17 on July 18th, 2007, didn't he?

18 A. Yes.

19 Q. He was not -- he did not have a valid CPR
20 certification, did he, at that time, correct?

21 A. No, it had just -- it had run out.

22 Q. Okay. So the statement that the counselors
23 will be CPR certified was not true as it related to
24 the day John Pluchinsky was in the pool, correct?

25 MR. SNYDER: Objection, form.

□00187

1 Q. (BY MR. MARRS) July 18th?

2 A. Yes. We did have several lifeguards and
3 Supv CC #1 was one of those lifeguards.

4 Q. That was not CPR certified and thus, that
5 statement would be untrue at least on July 18th,
6 2007, correct, sir?

7 MR. SNYDER: Objection, form.

8 Q. (BY MR. MARRS) Is that correct or not?

9 Either they were CPR certified or they weren't on
10 July 18th, 2007. Yesterday, we established that a
11 number of lifeguards were not validly certified for
12 CPR and a number of counselors were not validly CPR
13 certified. We went through that yesterday, correct,
14 sir?

15 MR. SNYDER: Objection, form.

16 A. The -- there were several lifeguards that
17 were not certified.

18 Q. (BY MR. MARRS) So there were several
19 lifeguards that did not have the safety instructions
20 as you've defined them today, correct?

21 A. Yes.

22 Q. And several counselors that did not have CPR
23 certification on July 18, 2007, correct?

24 MR. SNYDER: Objection, form.

25 A. That their -- that their certifications

□00188

1 weren't current.

2 Q. (BY MR. MARRS) And that's correct, isn't
3 it?

4 A. That their certifications weren't current.

5 Q. Right. Including Supv CC #1, who was one
6 of the two camp counselor supervisors, correct?

7 A. Supv CC #1, yes.

8 Q. Okay. Now, as part of the safety
9 instructions that the lifeguard should have, that
10 should include, for instance, where the emergency
11 phone is located at the pool, right?

12 A. Yes.

13 Q. It should include where the AED devices are
14 located, correct, for the lifeguards?

15 A. Yes, I think so.

16 Q. It should include for the lifeguards how to
17 use the AED devices if they choose to get them,
18 correct?

19 A. I would probably let Guillermo answer that,
20 but yes, I would think so.

21 Q. Well, you are a life -- you're an instructor
22 in CPR and AED, but you believe that the lifeguards
23 should definitely know where the AED devices are.
24 You've already testified to that, haven't you?

25 A. Yes, I think so.

□00189

1 Q. Okay. And obviously, when you're saying
2 "lifeguards with safety instructions, counselors
3 will be CPR certified," certainly you agree that the
4 lifeguards and the counselors should know how to
5 respond in case of an emergency in the very family
6 pool where they are watching children?

7 A. Yes.

8 Q. Don't you agree? Don't you agree?

9 A. Yes.

10 Q. And it says, "and in the water at all
11 times." You're saying, "All counselors will be CPR
12 certified and in the water at all times", correct?

13 A. Yes.

14 Q. To protect the children, right?

15 A. Yes.

16 Q. And to constantly watch them every second to
17 make sure that they don't drown, correct?

18 MR. SNYDER: Objection, form.

19 Q. (BY MR. MARRS) Or is it okay that they
20 don't watch them for a certain number of seconds?

21 MR. SNYDER: Objection, form.

22 A. No. We want the counselors to be in the
23 water with the children when the children are at the
24 pool and in the water.

25 Q. (BY MR. MARRS) And I think you've already

□00190

1 testified to this, but correct me if I'm wrong, that
2 they should be watching the children every second to
3 make sure they don't drown in the family pool,
4 shouldn't they?

5 A. Right. As a group they should watch all
6 their children.

7 Q. "Children will be grouped by age and
8 ability." And we already went over that and you
9 already testified under oath that the children were
10 not grouped by ability.

11 MR. SNYDER: Objection, form.

12 Q. (BY MR. MARRS) Correct?

13 A. Were we talking about swimming at the time
14 or testing them for swimming?

15 Q. We were talking about swimming ability at
16 the time, yes, sir.

17 A. I'm not talking about swimming in that
18 statement.

19 Q. Okay. Well, right after that when you say,
20 "We swim everyday," children -- let's start over.

21 (Reading) Sundry Information: Children will be
22 grouped by age and ability to ensure maximum
23 benefits, period. We swim everyday" and it goes on.

24 A. "So a bathing suit is required."

25 Q. Sure.

□00191

1 A. That's where that -- yeah.

2 Q. But you talk about swimming right after
3 that, correct?

4 A. Right.

5 Q. The fact is, you didn't group children by
6 swimming ability, you already testified to that,
7 correct?

8 A. Right. We do not test the children swimming
9 at our camp.

10 Q. What do you mean by "to ensure maximum
11 benefits"?

12 A. What we were talking about is in the games
13 they play. So that -- so that the children all get
14 to play the same -- that you don't have -- we simply
15 didn't want best friends to get -- we decide if we
16 play games who's in soccer on this team and who's on
17 soccer on that team, or basketball on this team,
18 basketball on that. That's why that line is in
19 there. That it may not be your buddies and it may
20 not be the biggest kids against the littlest kids or
21 all the good soccer players or the best soccer
22 players, or if they are in the pool not the fastest
23 swimmers against the swimmers just because they are
24 buddies. That's what we meant. That's what I meant
25 by that when we put that in.

□00192

1 Q. Okay. Well, let's get it this way. Don't
2 you think as the camp director it's a good idea to
3 group little four-year olds by swimming ability if
4 you're going to let them swim in your family pool?

5 MR. SNYDER: Objection, form.

6 A. No. I want all the swimmers together with
7 all the counselors when they are at the pool in the
8 water.

9 Q. (BY MR. MARRS) So because they are not in a
10 big circle with their arms holding hands with the
11 campers in the middle where they are all watching
12 every single kid at every second, you're going to
13 have them dispersed in different areas of the family
14 pool at different times, aren't you?

15 A. Probably, possibly.

16 Q. Okay. So is it your testimony that it's of
17 no use safety-wise to group children by swimming
18 ability, so that you know at any given time whether
19 the swimmer you're looking at is a poor swimmer, a
20 non-swimmer or a good swimmer?

21 A. We don't do any kind of swim testing, so we
22 would never -- in our camp we don't -- we don't
23 group them like that.

24 Q. You've already testified to that.

25 My question is: You know it would be

□00193

1 safer to group children by swimming ability before
2 you let them in your family pool, don't you?

3 MR. SNYDER: Objection, form.

4 A. No, I don't --

5 Q. (BY MR. MARRS) Do you disagree with that?

6 A. Yes, I do. I disagree with that.

7 Q. Okay. Do you think it's more important to
8 group them by ability if they're playing basketball
9 than if you're going to throw them in your family
10 pool in almost 4-feet of water? It's more important
11 that they be able to play basketball together by
12 ability than if they drown together or not drown
13 together by ability in your family pool; is that
14 correct?

15 MR. SNYDER: Objection, form.

16 Don't answer -- don't answer that.

17 Q. (BY MR. MARRS) Is it more important in your
18 mind to group kids by ability on the games they are
19 playing at the Racquet Club than when they are
20 swimming in the family pool?

21 A. Yes.

22 Q. Okay. A four-year old child in 3.6 feet of
23 water is a much more potentially dangerous situation
24 than a four-year old child that is playing
25 basketball; wouldn't you agree with that?

□00194

1 MR. SNYDER: Objection, form.

2 A. No. I mean --

3 Q. (BY MR. MARRS) Okay. Do you think that
4 more children die playing basketball than drowning in
5 swimming pools every year?

6 A. I have no idea.

7 Q. You have no idea?

8 A. I have no idea.

9 Q. Have you ever taken an American Red Cross
10 course?

11 A. I'm not sure.

12 Q. Have you ever read in the paper about the
13 statistics, the incredible statistics of how many
14 children die every year in swimming pool deaths?

15 A. Sure.

16 Q. Okay. Have you ever read an article in your
17 entire life about a child that's three, four or five
18 dying playing basketball ever?

19 A. Never. So I could not make the comparison.

20 Q. But you do make it clear that you want
21 anything that's not needed to be left at home,
22 correct? You state that in this form?

23 A. Yes.

24 Q. And who are the parents to go to if they
25 have a question? Your name is mentioned on this

□00195

1 form, isn't it?

2 A. Yes.

3 Q. And you charge more for non-members children
4 to attend your 2007 summer camp than members,
5 correct?

6 A. Correct.

7 Q. And when you are referring above, when
8 you're talking about program, to games such as
9 volleyball, basketball, football you don't state that
10 volleyball, basketball, football, ping pong,
11 gymnastics will be grouped according to ability, you
12 state it below after you talk about swimming and the
13 other sports, you say children will be grouped by
14 ability and age, don't you? You don't limit it just
15 to games, do you?

16 A. Yes, this --

17 MR. SNYDER: Objection, form.

18 A. That's exactly what we do.

19 Q. (BY MR. MARRS) You do not state that this
20 statement, "Children will be grouped by age and
21 ability" is only applicable to any particular thing
22 in the above paragraph, do you?

23 MR. SNYDER: Objection, form.

24 Q. (BY MR. MARRS) You don't limit it just to
25 games, do you? It's not stated in there, is it, sir?

□00196

1 A. That's what I was referring to.

2 Q. It's not in the form, is it, sir?

3 A. I --

4 MR. SNYDER: Objection, form.

5 A. I'm writing that so that we group them in
6 the games so that the teams are even.

7 Q. (BY MR. MARRS) That's not my question.
8 Where in the form does it say that your statement
9 that the children will be grouped by age and ability
10 applies only to the games mentioned and not the
11 swimming mentioned?

12 A. Nowhere.

13 Q. It doesn't say it, does it?

14 A. No.

15 Q. It doesn't limit it to that, does it, in the
16 form? Regardless of how you meant it inside your
17 head, it's not stated, is it?

18 MR. SNYDER: Objection, form. Asked
19 and answered.

20 You don't need to answer it a third
21 time.

22 Q. (BY MR. MARRS) No, you don't. You have
23 answered it. Thank you.

24 Then in Exhibit 18B, tell the jury what
25 that is.

□00197

1 MR. MARRS: Go ahead and --

2 MR. PLETCHER: Let me back it out.

3 MR. MARRS: Let him back it out so you
4 can see the whole thing.

5 A. That would be a 2007 confirmation letter.

6 Q. (BY MR. MARRS) That would have sent out to
7 the -- those that registered their kids in 2007
8 summer camp where you accepted their registration and
9 you were confirming to the parents that their kids
10 had been accepted?

11 A. That's correct.

12 Q. Okay. And your name is mentioned at the
13 bottom of that notification, isn't it?

14 A. Yes.

15 Q. And did you sign those as well?

16 A. I believe I did.

17 Q. Okay. And here you're saying, Welcome to
18 Houston Racquet Club 2007 summer camp. This letter
19 will confirm your registration for the following
20 weeks," and it lists the weeks and it says --

21 MR. PLETCHER: Let me zoom that in.

22 Q. (BY MR. MARRS) -- "Our Counselors and

23 Supervisors are very enthusiastic, energetic and are
24 looking forward to making this a fun, memorable and
25 healthy summer for your child. As always, the safety

□00198

1 of your child comes first and will not be compromised
2 in any way." Correct, sir?

3 A. That's right.

4 Q. Did you draft this form?

5 A. Yes.

6 Q. Okay. And you were telling the parents,
7 safety is important to us and we won't compromise
8 your child's safety at all, correct, sir?

9 A. Yes.

10 Q. In your opinion, was safety compromised at
11 all at the 2007 summer camp while John Pluchinsky was
12 in your family pool?

13 A. No, I do not.

14 Q. Not at all, correct?

15 A. Not at all, no.

16 Q. In your opinion, everything was just as it
17 was supposed to be safety-wise, correct?

18 A. Safety-wise, yes.

19 Q. In your opinion, your counselors did their
20 job as you expected them to?

21 A. Yes.

22 Q. And in your opinion, the lifeguards, at
23 least as far as you know, did their jobs as you and
24 the club would expect them to, correct?

25 A. Yes.

□00199

1 Q. Everyone did their job, everyone watched
2 John Pluchinsky every second he was in the pool,
3 correct?

4 A. I can't -- I can't say that.

5 Q. Well, how can you say lifeguards and
6 counselors did their job when you can't even say that
7 the lifeguards and counselors were even watching John
8 at the time that he drowned? How can you say that?

9 A. Because I don't know that they weren't.

10 Q. You don't know that they were, do you, sir?

11 A. I don't know that they were or weren't.

12 Q. So therefore, you can't say whether or not
13 the lifeguards were or not doing their job, can you?

14 MR. SNYDER: Objection, form.

15 A. I can't speak for the lifeguards.

16 Q. (BY MR. MARRS) You can't say one way or the

17 other. You can't say that the counselors were doing
18 their jobs because you don't know if the counselors
19 were or were not watching John when he drowned,
20 correct?

21 MR. SNYDER: Objection.

22 Q. (BY MR. MARRS) You would have to know that,
23 wouldn't you?

24 MR. SNYDER: Objection, form.

25 A. I feel the counselors were doing their job

□00200

1 and I don't know that any of them or if anybody or
2 everybody saw John.

3 Q. (BY MR. MARRS) You don't know one way or
4 the other?

5 A. Right.

6 Q. And you don't know one way or the other
7 whether the counselors were doing their jobs then,
8 correct?

9 MR. SNYDER: Objection, form.

10 A. No. I think they were doing their job.

11 Q. (BY MR. MARRS) Regardless of whether they
12 were watching John at the time he drowned, correct?

13 MR. SNYDER: Objection, form.

14 A. I don't know that they weren't or were.

15 Q. (BY MR. MARRS) No matter what I ask you,
16 the counselors nonetheless did their jobs correctly,
17 right?

18 A. Yes.

19 Q. Do you believe that letting a four-year-old
20 child venture into water too deep for him to stand
21 and breathe without any supervision compromises
22 safety, if that were the fact?

23 A. I don't know that.

24 Q. If that were the fact, would that be
25 compromising safety, to allow a four-year-old child

□00201

1 to do that without supervision?

2 A. I don't know that.

3 Q. So you believe it would be perfectly fine to
4 allow a four-year-old child to venture into water
5 unsupervised in your family pool in water too deep
6 for him to stand and breathe?

7 MR. SNYDER: Objection.

8 A. Well, we wouldn't allow that to happen. I
9 mean, we wouldn't -- that wouldn't be part of our
10 policy for our summer camp, but I mean -- a

11 four-year-old child at the pool in water over his
12 head who can swim, that's not a safety at all.
13 That's a -- fine, so -- but not in my camp. In my
14 camp the counselors are with the children when they
15 are in the pool.

16 Q. (BY MR. MARRS) And it would be unsafe if
17 the counselor was not watching the child and allowed
18 the child to venture into water too deep for him to
19 stand and breathe for five minutes, wouldn't that
20 compromise safety, in your opinion, if that were the
21 fact?

22 MR. SNYDER: Objection, form.

23 A. I don't -- I don't know.

24 Q. (BY MR. MARRS) You don't know?

25 A. I don't know.

□00202

1 Q. That would be okay with you?

2 MR. SNYDER: Objection, form.

3 A. No. I don't know that that would be an
4 unsafe situation or not.

5 Q. (BY MR. MARRS) What would it take to be
6 unsafe, in your opinion?

7 A. I would just be speculating. I don't -- I
8 don't know.

9 Q. Would that child have to drown for you to
10 say it's unsafe?

11 MR. SNYDER: Objection, form.

12 Don't answer that.

13 Q. (BY MR. MARRS) I take it you believe that
14 on July 18, 2007 you and Guillermo Palmer did their
15 jobs adequately in terms of making sure the
16 lifeguards and counselors were doing their jobs,
17 correct?

18 A. Yes, I think so.

19 Q. You can't think of any failing of yourself
20 or Guillermo Palmer on that fateful day, can you?

21 MR. SNYDER: Objection, form.

22 A. No.

23 Q. (BY MR. MARRS) Is that correct?

24 A. I think so, yes.

25 Q. Are you sure? You say, you think so?

□00203

1 A. Yes, I'm sure.

2 Q. Is there anything that you think someone,
3 whether it be a counselor, a lifeguard, a supervisor
4 or a manager could have done better on that fateful

5 day?

6 MR. SNYDER: Objection, form.

7 A. I just wasn't there at the pool, so I can't
8 say one way or another what -- if every lifeguard,
9 every counselor -- as far as I know, they did a
10 satisfactory job.

11 Q. (BY MR. MARRS) You're the man in charge of
12 that summer camp, sir. You've already testified
13 about all the statements and interviews you've read.
14 After reading all those things, and your own
15 investigation, the club's investigation, the police
16 investigation, CPS investigation, is there anything
17 you can point to where a counselor, lifeguard,
18 supervisor or manager could have done better on that
19 fateful day, yes or no?

20 A. I never read the club's investigation, but
21 on the others you refer to, when I read through
22 those, no.

23 Q. You can't think of anything that anyone
24 could have done better, correct?

25 A. No, sir, not to make it safe.

□00204

1 Q. Is that correct?

2 A. Yes. That's -- I'm sorry, yes, that's
3 correct.

4 Q. Have you been to any club where you observed
5 that they separated young children out by swimming
6 ability?

7 A. No, sir. I haven't been to any of the other
8 clubs and observed their camps doing that.

9 Q. How about forgetting camps, just in
10 swimming, swimming programs, whatever, in their pools
11 where they separate children by swimming ability?

12 A. No, I don't think so.

13 Q. Have you ever been to a club or a pool where
14 they separ -- they color-coded children for any
15 reason?

16 A. No, I haven't.

17 Q. Your club uses wristbands for some reasons
18 at your club, correct?

19 A. Yes.

20 Q. For what reasons?

21 A. Guillermo -- Mr. Palmer might be able to
22 answer that better, but I think the pool desk
23 might -- we might put wristbands on guests for the
24 day.

25 Q. Yes, sir.

□00205

1 A. And I'm not sure what else.

2 Q. Well, what color would they be?

3 A. Oh, they would be a variety of colors. I

4 mean --

5 Q. A variety of colors?

6 A. Yeah. I mean, it would be a specific color

7 for that day, I think, but not...

8 Q. Okay. What prevented the Racquet Club from

9 putting a wristband on a child to indicate their age

10 group, anything?

11 A. No, sir.

12 Q. What prevented the Racquet Club from

13 color-coding children by using different color

14 wristbands to indicate whether that particular child

15 was a good, excellent or bad or non-swimmer?

16 MR. SNYDER: Objection, form.

17 Q. (BY MR. MARRS) Anything?

18 A. We didn't -- we didn't test the children for

19 swimming abilities.

20 Q. Okay. There was nothing that prevented you

21 from testing children's swimming ability, was there?

22 You could have if you had chosen as part of your

23 summer camp?

24 A. To change the camp format, yes, we could

25 have.

□00206

1 Q. And you could have color coded the children

2 based on swimming ability if you chose to do it that

3 way, correct?

4 A. That's -- yeah, that's not the type of camp

5 we were running.

6 Q. You could have done that before you let

7 children in your family pool if you had so chosen,

8 correct, sir?

9 A. I suppose, yeah.

10 Q. Okay. You could have had different color

11 swimming caps so you could easily see children in the

12 pool if you so chose to designate their swimming

13 ability after testing them if you chose to run it

14 that way, correct, sir?

15 A. I would just be guessing now. I mean, I --

16 I don't know what we could or couldn't do. I mean --

17 Q. You don't?

18 A. Right. I mean, that's not something we did,

19 so I'm just -- I would just be saying that.

20 Q. I know you didn't do it, sir. I'm asking
21 you if you, as camp director, wanted to propose that,
22 you could have proposed that?

23 A. Yes, I could have proposed that.

24 Q. Do you know how much one of those color
25 wristbands cost that you use at your club to

□00207

1 designate guests?

2 A. No, sir.

3 Q. How much do you think it would cost per
4 band, less than a quarter?

5 MR. SNYDER: Objection, form.

6 A. I have no idea.

7 Q. (BY MR. MARRS) You would suspect it would
8 be a pretty nominal cost?

9 MR. SNYDER: Objection, form.

10 A. I'm not sure.

11 Q. (BY MR. MARRS) You have no responsibility
12 for lifeguard instruction or training; is that
13 correct?

14 A. No, sir.

15 Q. Is that correct?

16 A. Yes. I'm sorry.

17 Q. Okay. And Supv CC #1, he was transferred
18 from the pro shop to lifeguard, wasn't he, as shown
19 in Exhibit 13B, correct?

20 A. Yes, sir.

21 Q. Did you know Supv CC #1 before he came to
22 work at the Houston Racquet Club?

23 A. Before he was employed?

24 Q. Yes, sir.

25 A. Yes. He's a -- yes, I did.

□00208

1 Q. How?

2 A. He's the son of one -- he's the son of --

3 Q. HRCBM-C?

4 A. Yes.

5 Q. Who is what?

6 A. He's the manager of the grounds.

7 Q. Okay. And we know that from looking at
8 Exhibit 13 that Supv CC #1's CPR certification
9 expired on May 20th, 2007, correct?

10 A. Yes, sir.

11 Q. And we know that he was transferred into a
12 lifeguard position on May 30th, at a time when his

13 CPR certification was not even current, correct, sir?

14 A. Yes. That looks to be the case.

15 Q. And Exhibit 12 is --

16 MR. MARRS: Let's put this particular
17 document -- it's the third document in the
18 confidential documents.

19 THE REPORTER: Okay.

20 Q. (BY MR. MARRS) -- is your resume, correct,
21 sir?

22 A. Yes, sir.

23 Q. And when you were at the Bayou Park Club in
24 Houston, Texas as the general manager, did they have
25 swimming pools?

□00209

1 A. Yes, we did.

2 Q. Did they have summer camps?

3 A. No, we didn't.

4 Q. And did they allow four-year olds in their
5 pools?

6 A. I'm sorry. I'm trying to think back on
7 that.

8 Q. While you're thinking on that, let me ask
9 you another question. Did they color-code children
10 at all?

11 A. No, sir.

12 Q. Did they ever have a child drown in their
13 pool, to your knowledge?

14 A. I don't know.

15 Q. Not to your knowledge?

16 A. Right.

17 Q. And The Houstonian, HFund in Houston from
18 '88 to '89, did they allow children, small children
19 as young as four-year olds in their pool at that
20 time?

21 A. I wasn't really a part. I really didn't
22 have anything to do with the aquatics, so I'm not
23 sure what their program would have been.

24 Q. Do you know whether or not they color-coded
25 children according to swimming ability?

□00210

1 A. No, sir, I don't.

2 Q. Okay. Back to Bayou Park. Do you remember
3 now whether or not they allowed four-year olds in
4 their pool?

5 A. I think we were -- I think we had -- I think
6 it was just an open membership, so if you -- if your

7 family came out, you could no matter what the age,
8 you could be in there. But I don't -- I can't think
9 of any children at that -- at our club there.

10 Q. And what about with respect to The
11 Midlander, did they have pools?

12 A. Yes, sir. We had a -- we had an indoor
13 pool.

14 Q. Did they allow kids as young as four-year
15 old -- four-years old in their pool or did they have
16 a minimum age?

17 A. It was a family pool, too. So if you were
18 with your parents, regardless of age you could do it.

19 Q. They required parental or adult supervision
20 for children as young as four-years old if they are
21 going to get in their pool?

22 A. Whatever family -- it was adult swim only.
23 There were no lifeguards. It was -- so it was --
24 adults had to be with any children that were at that
25 pool.

□00211

1 Q. And that certainly is a good safety rule,
2 isn't it?

3 A. Parents with children, always, sure.

4 Q. Adults with children always, correct?

5 That's a good safety rule, isn't it?

6 A. Well, I can't answer that.

7 Q. You can't? As a man who's been Director of
8 Operations for the Midlander, general manager with
9 the Bayou Park Club, Assistant Director of Operations
10 for The Houstonian, Camp Director for the prestigious
11 Racquet Club, you can't say whether it's a good idea
12 to make sure that there are adults with young
13 children as young as four-years old if they are going
14 to be in a swimming pool?

15 MR. SNYDER: Objection, form.

16 A. Yeah. Under those circumstances, yes. You
17 wouldn't want any adult with just any child, of
18 course not.

19 Q. (BY MR. MARRS) And did the Midlander ever,
20 to your knowledge, color-code children according to
21 swimming ability?

22 A. No, sir, we didn't.

23 Q. Well, had you gone to any local club in
24 Houston to see how they ran their summer camps?

25 A. We visited with -- most of the clubs in our

□00212

1 swim league, when we would have swim meets, I would
2 visit them with -- and we would exchange ideas and in
3 conversation, in casual conversation --

4 Q. Well, I'm not --

5 A. -- during swim meets.

6 Q. Okay. But I'm not talking about swim meets.

7 I'm talking about summer camp, like the summer camp
8 you ran at the Racquet Club. Did you ever go during
9 summer camp to determine how other local Houston
10 clubs run their summer camps?

11 A. No, sir.

12 Q. And how they make them safe?

13 A. No, sir.

14 Q. Do you think that would have been a good
15 idea to do to pick up any good safety tips or
16 practices that you could pick up to make your kids
17 safe in your Racquet Club summer camp?

18 MR. SNYDER: Objection, form.

19 Q. (BY MR. MARRS) Do you think that's a good
20 idea?

21 MR. SNYDER: Objection, form.

22 A. Well, again, we visited casually with each
23 one of them, talking about summer camps. They would
24 ask us about ours and we would exchange ideas then.
25 I never formally went to anyone -- during their

□00213

1 summer camp, our camps were running, so that made
2 it --

3 Q. (BY MR. MARRS) So never formally did, but
4 informally, are you testifying that you asked someone
5 at another club, "Hey, how can I best protect young
6 children in the swimming pool?"

7 A. No.

8 Q. You never did that, did you?

9 A. No.

10 Q. And did you ever go to outside courses to
11 best determine how to protect young children in your
12 pools at the Racquet Club?

13 A. No, sir.

14 Q. Or run a summer camp?

15 A. No, sir.

16 Q. Is there money in the budget at the Racquet
17 Club to enable you to do that, to your knowledge?

18 A. I can't answer that. That would be -- that
19 would be Mr. Griffin's.

20 Q. Have you ever requested to do that? Ever

21 requested to Mr. Griffin or anybody else to do that?

22 A. No, sir, I don't think so.

23 Q. Have you ever told anyone that John

24 Pluchinsky was a good swimmer?

25 A. One of the counselors told me that at the

□00214

1 time of the accident and I think I told -- and during

2 my questioning with Officer Beverage or Sergeant

3 Walpole I told them what I had heard. It was -- it

4 was -- it was secondhand. I never saw John -- I

5 never -- I never knew if I saw -- I never saw John

6 swim. I was never there when John was swimming.

7 Q. But you told the officer that John was a

8 good swimmer, didn't you?

9 A. I was told that he was a good swimmer, yes.

10 And I told Officer Beverage or Sergeant Walpole what

11 I was told.

12 Q. Tell me exactly what you told the officer

13 with respect to John's swimming ability.

14 A. I said I heard that he was a good swimmer.

15 Q. Did you tell him, "But we really didn't test

16 his swimming ability?"

17 A. No. No, sir.

18 Q. Did you tell him, "But we didn't ask his

19 parents if he was a good swimmer or not?"

20 MR. SNYDER: Objection, form.

21 A. No.

22 Q. (BY MR. MARRS) And certainly, you did not

23 tell him, but I can't confirm that anyone was even

24 watching him at the time he drowned?

25 MR. SNYDER: Objection, form.

□00215

1 Q. (BY MR. MARRS) Did you?

2 MR. SNYDER: You don't need to answer

3 that.

4 THE WITNESS: Okay.

5 Q. (BY MR. MARRS) Did he ask you that, was

6 someone watching John Pluchinsky at the time he

7 drowned?

8 A. No, sir, he didn't ask me that.

9 Q. Was your daughter, CC-A, hired as a

10 lifeguard at the Houston Racquet Club?

11 A. I'm not sure -- we may have used her early

12 in the season, but we didn't use her once the season

13 started.

14 Q. Why not?

15 A. She's -- she -- and Guillermo can speak to
16 that. She just didn't want to. She wanted -- she
17 wanted to be involved in the camp.

18 Q. Why did you leave the Bayou Park Club in
19 Houston?

20 A. Bayou Park Club is tied in with the
21 Houstonian, that -- I was working at the Houstonian
22 and they owned the Bayou Park Club. I was
23 transferred from the Houstonian to the Bayou Park
24 Club. And after about a year or however long I was
25 at the Bayou Park Club, we simply parted ways.

□00216

1 Q. Okay.

2 A. Mutually agreed.

3 Q. And the counselor that you say told you that
4 John was a good swimmer, who was that?

5 A. I cannot remember.

6 Q. Female or male?

7 A. It was a female.

8 Q. Was it 4 y/o B-CC #1 ?

9 A. I just don't know.

10 Q. Well, what else --

11 A. I -- you know, maybe -- no, I can't -- I
12 don't know.

13 Q. What color hair did she have?

14 A. I don't know.

15 Q. Was it a female counselor that was in the
16 pool at the same time John was, to your knowledge?

17 A. I'm not -- I don't know.

18 Q. What exactly did she say with respect to his
19 swimming ability?

20 A. She just said he was a good swimmer.

21 Q. Was it 4 y/o B-CC #2 , to your knowledge?

22 A. I can't -- I can't be sure. I don't know.

23 Q. Did you write that down anywhere?

24 A. No, sir. I told -- I told one of the
25 officers. And it may have been during his

□00217

1 questioning. I don't know.

2 Q. Did John Pluchinsky even tread water?

3 A. I don't know.

4 Q. Even if a small child is good at swimming
5 from A to B, if he can't tread water, that might be
6 dangerous if he's not supervised; don't you agree?

7 MR. SNYDER: Objection, form.

8 Q. (BY MR. MARRS) Because once he stops and he

9 can't swim, what's going to happen?

10 MR. SNYDER: Objection, form.

11 Q. (BY MR. MARRS) Back to my question. Just
12 because a child may be a good swimmer does not mean
13 particularly that he can tread water, correct?

14 MR. SNYDER: Objection, form.

15 A. I agree.

16 Q. (BY MR. MARRS) Is your compensation at the
17 Houston Racquet Club tied to the revenue of the
18 Houston Racquet Club in any way?

19 A. My --

20 MR. SNYDER: Objection, form.

21 A. Tied to the revenue. How do you -- I'm
22 sorry, how do you mean that?

23 Q. (BY MR. MARRS) I mean, do you get any kind
24 of bonus or any kind of pay or compensation based on
25 revenue of the Houston Racquet Club or its programs

□00218

1 or training?

2 A. **Redacted- HRC Designation as Confidential**

3 Q. Okay. Now, let's look at Exhibit 12 and the
4 attached contract under Page 2, Paragraph 4. Is that
5 your current compensation structure at the Houston
6 Racquet Club or at least part of it?

7 A. Yes. I -- well, Number 2,

8 **Redacted- HRC Designation as Confidential**

9 Q. Yes, sir.

10 A. But my -- but my personal training has been
11 cut.

12 Q. To what?

13 A. **Redacted- HRC Designation as Confidential**

14 Q. Okay.

15 **Redacted- HRC Designation as Confidential**

16

17

18 Q. Okay.

19 **Redacted- HRC Designation as Confidential**

20

21 A.

22 Q.

23 A.

24 Q. And the expenses of the summer camp, such as
25 equipment and things, of course, go into the net to

□00219

1 figure out the net revenue, correct?

2 A. I'm sorry. Is net profit? I -- my

3
4 **Redacted-**
5 **HRC Designation as Confidential**
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16 Q. Correct?

17 A. Right.

18 Q. How much of your time is spent with personal
19 training lessons, what percent generally?

20 A. Maybe one to -- one to two hours a day,
21 maybe.

22 Q. How about for 2007, during the 2007 summer
23 camp, how much of your time was devoted to personal
24 training versus the camp?

25 A. Very little personal training probably.

□00220

1 Q. What percentage of your time, you think?

2 A. Well, it could have only been before or
3 after.

4 Q. Why?

5 A. Well, we don't train -- we wouldn't -- I
6 wouldn't train during camp and...

7 Q. You didn't train anybody during the 2007
8 summer camp?

9 A. I probably trained several people, yes.

10 Q. And what kind of calendar do you keep?

11 A. I really don't use one. I have -- I have a
12 big calendar like that on my desk, but I don't
13 actually use it that much. I don't have anything on
14 my computer that I use and I don't carry a --

15 Q. Well, how did you know I was going to ask
16 you about your computer?

17 A. You know, I don't know. I'm sorry. I don't
18 know that you were. I apologize. I was getting way
19 ahead of what I'm supposed to say.

20 Q. You do have a desk calendar?

21 A. Yes, sir.

22 Q. And is that what you use to schedule all of

23 your training, so you'll know where to be when?
24 A. Maybe originally, like if I had an
25 appointment to meet a new member, I would write that

□00221

1 down, but if I have an ongoing person at 5:00 in the
2 morning, I -- that -- that's not on there.

3 Q. Okay. Well, you had one for 2007 on your
4 desk, didn't you?

5 A. Yes, I think so.

6 Q. And any other calendars that you use other
7 than that one?

8 A. No, sir.

9 Q. And do you still have the 2007 summer --
10 excuse me --

11 A. I --

12 Q. 2007 calendar that you had on your desk?

13 A. No, sir, I don't.

14 Q. Where would it be?

15 A. I don't know.

16 Q. Well, you had it on July 18, 2007, didn't
17 you?

18 A. Sure.

19 Q. Okay. Where would it be?

20 A. I probably had it up to --

21 Q. December 2007?

22 A. Yes, sir.

23 Q. And so where --

24 A. No. Maybe not, maybe not -- maybe not the
25 months. Maybe as the months passed on, I would -- I

□00222

1 would not have it.

2 Q. So where would the July 2007 page on that
3 calendar be?

4 A. Possibly discarded.

5 Q. Meaning what?

6 A. We -- I threw it away.

7 Q. Didn't you get the important message that
8 Mr. Griffin had about not destroying anything?

9 A. Yes. I saved everything, but I didn't think
10 that was part of it, but that -- I -- and I didn't

11 associate that calendar, my -- you can look at my
12 calendars for this year and they are empty basically
13 except for scribbles. It's more of a phone pad and
14 stuff. But no, I -- there's a good chance I

15 discarded that month, each month as they came up.

16 Q. Well, you're not going to testify that there

17 was nothing regarding the 2007 summer camp on that
18 calendar, are you?

19 A. There may have been some phone numbers and
20 stuff as I took them, like if --

21 Q. Uh-huh.

22 A. -- if -- what I basically use, if I'm taking
23 a phone call, I will write down -- if Ms. So-and-So
24 called, I would write it on the calendar.

25 Q. Okay.

□00223

1 A. But not in any specific day like, oh, I
2 called her on the 8th, I wouldn't write it in the
3 8th. It's just a --

4 Q. Okay.

5 A. -- scribble calendar.

6 Q. Well, you would receive a number of calls
7 from parents with respect to the 2007 summer camp,
8 correct?

9 A. Yes.

10 Q. And the content or at least some reference
11 to those phone calls might have been on your 2007 --
12 July 2007 --

13 A. No, I don't think so.

14 Q. -- calendar, don't you think?

15 A. No.

16 Q. No?

17 A. No.

18 Q. Are you sure?

19 A. Pretty sure.

20 Q. Have you had anything to do with the
21 placement of lifeguard chairs at the family pool?
22 Let's look at Exhibit Number 14.

23 Go ahead, sir. I'm sorry.

24 A. Yes. In conjunction with Mr. Palmer, I --
25 we did.

□00224

1 Q. Tell me your involvement.

2 A. He discussed with me where we might move one
3 of the tall -- the tall movable umbrellas.

4 Q. When -- And how many times did you discuss
5 that?

6 A. We pretty much -- after Mr. Palmer took
7 over, we pretty much, after that that's when it
8 stayed where we decided to put those. They have been
9 there ever since.

10 Q. The tall movable umbrellas?

11 A. I'm sorry, lifeguard chairs.
12 Q. Okay. And you say you discussed it with
13 Mr. Palmer when Mr. Palmer took over?
14 A. Yes.
15 Q. And when would that have been?
16 A. I think early spring of 2006.
17 Q. Okay. And where were they at the time that
18 Mr. Palmer took over prior to this conversation,
19 where were the lifeguard chairs at the family pool?
20 A. At the family pool?
21 Q. Yes, sir.
22 A. We had only done some -- I think possibly
23 three weekends of grand openings, so they were
24 probably still where Watts Pool Company had left them
25 when they set it up.

□00225

1 Q. Okay. And where they set it up is shown on
2 Exhibit 14, one here, a movable one by the slide, to
3 the left of the slide, at least on this diagram, and
4 one here at this location that I'm pointing at and as
5 is depicted on the diagram on the west end of the
6 pool, correct?
7 MR. SNYDER: Objection, form.
8 A. No, sir.
9 Q. (BY MR. MARRS) Okay. Where were they?
10 A. Watts had set your eastern umbrella --
11 lifeguard stand on the right side of the -- yeah,
12 right --
13 Q. Okay.
14 A. Actually, right there (indicating).
15 Q. Okay. And where else?
16 A. And in between the sun deck and the
17 fountains on the north part.
18 Q. Here (indicating)?
19 A. Yes, sir, right there.
20 Q. Okay. So here (indicating). Write -- let's
21 put it as a double circle. You're saying that the
22 pool company placed the chairs when they installed
23 the pool, the two movable lifeguard chairs here --
24 excuse me, to the right of the --
25 A. Slide, yes, sir.

□00226

1 Q. Exactly where it is now today?
2 A. Same place as it is, yes.
3 Q. Okay. And the second movable tall lifeguard
4 chair was placed here at the double circle by the

5 fountains?

6 A. Yes, sir.

7 Q. And what discussions did you and Mr. Palmer
8 have with respect to where they should be?

9 A. He felt there was a blind spot on the east
10 side of the fountains.

11 Q. On the east side of the fountains?

12 A. Yes, sir. Right there where that little
13 tiny --

14 Q. Here, where the hash marks are?

15 A. That's actually -- that's actually cement,
16 inside.

17 Q. Okay.

18 A. Yeah. He felt there was a blind spot in the
19 water on those -- on the east side of the fountain.

20 Q. Okay. And thus, he thought that the chairs
21 should be moved where?

22 A. On the opposite side, where you could see --

23 Q. Over here?

24 A. Yeah. Well, not there. Under -- on the
25 other side of those steps.

□00227

1 Q. Right there?

2 A. Yeah, right there.

3 Q. Okay. And is that why the chair, the second
4 chair is here today?

5 A. Yes.

6 Q. Did you have any discussion with him with
7 respect to whether the chair instead should be over
8 here on the west end of the pool?

9 A. No. We never discussed it there. If we
10 did, we would have still had that blind spot on the
11 east side of the fountain, so...

12 Q. But you would not have a blind spot on the
13 east side of the fountain if you had a chair here and
14 still had a third chair here on the west end, would
15 you? You would still be covered by this chair on the
16 east end and the entire west end would be covered if
17 there was a third chair here, correct?

18 A. That would be one location we could put a
19 third chair, sure.

20 Q. As a matter of fact, isn't that why there
21 was a third chair right here in this very location
22 where Mr. Griffin circled red to cover this part of
23 the pool during, I think as he said, particularly
24 busy days?

25 MR. SNYDER: Objection, form.

□00228

1 A. I'm not sure there was ever a chair there.

2 Q. (BY MR. MARRS) Do you disagree with
3 Mr. Griffin when he says there was?

4 A. He -- I'm not at the pool all the time.

5 They may very well have -- if it was like on those --

6 Q. You heard his testimony?

7 A. -- grand openings. Yeah. We could have
8 pulled a chair up there. I never saw a chair there.

9 Q. Okay. Well, I thought you just testified
10 earlier today that during your grand opening, you did
11 see a chair there.

12 A. Not -- I don't know that -- if it was
13 specifically where you've got your "X" that you're
14 talking about Steve -- Mr. Griffin said. It could
15 anywhere along that east side and I'm not sure.

16 Q. You mean, it could be anywhere along that
17 west side?

18 A. I'm sorry, yes, west side.

19 Q. Okay. Well, I'm sorry. I didn't know we
20 were quibbling with exactly this exact specific
21 spot. What I'm asking you is: Have you ever seen a
22 third lifeguard chair on the west end, anywhere on
23 the west end of the family pool, a third lifeguard
24 chair?

25 A. Never a lifeguard chair. We may have had a

□00229

1 white -- a little white chair there.

2 Q. How many times?

3 A. And of course after John's -- after John --

4 Q. Passed away?

5 A. Yeah. After that, then I think Guillermo

6 sat there for a couple of weeks, he or LG Supv .

7 Maybe once or twice I saw it on our grand opening or
8 something like that, but I can't be -- I can't be for
9 sure exactly what spot. There may have been one on
10 that west -- those two west sides.

11 Q. Okay. Well, you will admit, won't you, that
12 having a chair on the west side is the closest place
13 to have a lifeguard chair if you wanted to
14 specifically watch this west part of the pool,
15 wouldn't you?

16 MR. SNYDER: Objection, form.

17 A. Yeah. I better let a lifeguard speak to
18 that because I know lifeguards scan at -- I think

19 Steve said yesterday, 180 degrees. And so, I better
20 let a lifeguard answer that, but I mean, yeah.

21 Q. (BY MR. MARRS) Yeah, what?

22 A. I think a lifeguard should answer that more
23 than --

24 Q. Okay. Well, here's my question: Is there
25 any place closer to this location where my pen is

□00230

1 right now than right here (indicating)?

2 A. That's your -- that's your question?

3 Q. Yes.

4 A. No, sir.

5 Q. This is the closest, isn't it?

6 A. To that spot you put, that little dot?

7 Q. Yes, sir.

8 A. Yes, that would be the closest location.

9 Q. And with respect to that little spot, that
10 that "X" right here, if there had been a lifeguard
11 standing or sitting right here and John Pluchinsky
12 had been right here (indicating), that could have
13 made a difference as to whether or not he drowned,
14 couldn't it?

15 MR. SNYDER: Objection, form.

16 A. I can't -- I can't -- I can't say that.

17 Q. (BY MR. MARRS) It's common sense, isn't it?
18 If someone was directly observing the very spot where
19 John Pluchinsky drowned, that might have made a
20 difference?

21 MR. SNYDER: Objection, form.

22 Q. (BY MR. MARRS) Could have made a
23 difference; wouldn't you agree that?

24 MR. SNYDER: Objection, form.

25 A. I can't answer it like that.

□00231

1 Q. (BY MR. MARRS) Well, how would you answer
2 it?

3 A. I wouldn't. It would be speculation that he
4 would -- that a lifeguard, he or she would look at
5 that direct spot. 15 y/o LG #1 looked at the right spot. I
6 mean, no, I cannot -- I mean, that's ridiculous. I
7 can't say that. That would be speculation that they
8 would have seen John floating or drowning or whatever
9 you're saying.

10 Q. (BY MR. MARRS) Okay. So if a lifeguard is
11 standing right there over the spot where John
12 Pluchinsky was and he was correctly doing his job and

13 scanning the pool, that could have made a difference?

14 MR. SNYDER: Objection.

15 Q. (BY MR. MARRS) Wouldn't you agree?

16 MR. SNYDER: Objection, form.

17 Q. (BY MR. MARRS) As to whether or not he
18 drowned?

19 A. No. I cannot agree to that.

20 Q. Would it have made it safer on the west end
21 of the pool?

22 MR. SNYDER: Objection, form.

23 A. I can't agree to that.

24 Q. (BY MR. MARRS) The more lifeguards you have
25 at a pool, the safer. Wouldn't you agree with that

□00232

1 or not?

2 A. I can't agree to that.

3 Q. And having a lifeguard at the very area
4 where four-year olds are going to be congregating, up
5 to 26 four-year olds congregating, having a lifeguard
6 close to that very area would be safer than having a
7 lifeguard not close to that area. Wouldn't you agree
8 with that or do you disagree with that, too?

9 A. Yeah. I would have to say I can't.

10 Q. Okay. And having a lifeguard at the pool is
11 safer than not having a lifeguard at the pool. Do
12 you disagree with that, too?

13 A. No. I suppose if you have a lifeguard as
14 opposed to no lifeguard, you could potentially be
15 safer.

16 MR. SNYDER: 6:05. Let's break.

17 MR. MARRS: You bet.

18 VIDEOGRAPHER: Off the record. The
19 time is 6:02 p.m.

20 (Brief recess.)

21 VIDEOGRAPHER: Back on the record. The
22 time is 6:15 p.m.

23 Q. (BY MR. MARRS) And, Mr. Lamkin, were you
24 Guillermo Palmer's boss during the 2007 summer camp?

25 A. Yes, sir.

□00233

1 Q. So do you give Guillermo Palmer the
2 parameters in which he is to operate?

3 MR. SNYDER: Objection, form.

4 A. I guess, meaning --

5 Q. (BY MR. MARRS) What he can or can't do?

6 A. Yes, with Mr. Griffin.

7 Q. And how does it differ, your supervision of
8 him versus Mr. Griffin's?

9 A. Mr. Griffin could over cede (phonetic)
10 anything I might say.

11 Q. Okay. As his boss, didn't you have to
12 review his proposed lifeguard training?

13 A. Yes. Oh, well, I would never be at one. I
14 wouldn't -- I was at his first meeting, but I would
15 never be at a training.

16 Q. Do you know what kind of training Guillermo
17 Palmer gives to his lifeguards, if any?

18 A. I think it's internal audits. We don't have
19 a -- we have a company now. We didn't then.

20 Q. Okay.

21 A. So it was him working with them.

22 Q. But before, during 2007, were you aware of
23 the kinds of training that Guillermo Palmer, if any,
24 gave to his lifeguards?

25 A. Not the specifics, no.

□00234

1 Q. How many hours a day did you require
2 Guillermo Palmer to be at the pools at the Racquet
3 Club as -- when he was aquatics director?

4 A. I would have required about 40 hours a
5 week. Guillermo Palmer works about 80-plus hours a
6 week.

7 Q. What time does he typically get to the
8 Racquet Club for work every day or does it differ?

9 A. There's -- it may differ a little bit, but
10 for the most part, G -- Mr. Palmer gets there at
11 about 5:00-ish. We have a morning meeting at about
12 5:30.

13 Q. Well, what time did Guillermo Palmer get to
14 work on July 18, 2007?

15 A. It would have probably -- and that was a
16 Wednesday. He would have been there around -- in
17 between 5:00 and 5:30.

18 Q. In the morning?

19 A. Yes.

20 Q. Where was he at the time that John
21 Pluchinsky drowned in the family pool, to your
22 knowledge?

23 A. I'm not sure when John -- John drowned.

24 Q. When John was discovered in the family pool
25 floating facedown, where was Guillermo Palmer?

□00235

1 A. Well, I have his statement and he was in
2 the -- inside the building -- inside our main --
3 inside our main building.

4 Q. Do you typically have lunch with Guillermo
5 Palmer around 11:00, 11:15?

6 A. Try to, yes.

7 Q. And isn't that one of the busiest times
8 during your summer camp 2007?

9 A. No busier than the other -- the other
10 sections. We divide -- we try to divide the children
11 up equally at the pool.

12 Q. Whether or not it's busier than any other
13 time, you do know that on July 18, 2007 there were at
14 least 26 four-year olds, some seven-year olds and
15 others in the family pool at that time?

16 A. Yes.

17 MR. SNYDER: Objection, form.

18 Q. (BY MR. MARRS) Who's responsible for
19 scheduling the times when certain groups will be in
20 the family pool for summer camp?

21 A. That would be 4 y/o B-CC #1 . She's
22 changed it now.

23 Q. And do you approve those schedules?

24 A. Yes. I over -- yes, I do.

25 Q. And you approved the schedule for week five

□00236

1 of the 2007 summer camp; is that correct?

2 A. Yes. Although CD can make any
3 changes if she sees fit. That's in....

4 Q. And you did not see fit to change the
5 groups' timing for four-year-old boys, four-year-old
6 girls or others in the week five with respect to what
7 kids would be in the family pool at the same time?

8 A. No, sir.

9 Q. Certainly, the family pool on July 18, 2007
10 was busier than non-summer camp days, typically,
11 correct?

12 MR. SNYDER: Objection, form.

13 A. I'm -- I can't be sure.

14 Q. (BY MR. MARRS) You can't be sure?

15 A. No. I mean, we have --

16 Q. Well, having 20 -- would it be unusual for
17 you to have 26 four-year olds in that family pool at
18 times when you weren't even having summer camp?

19 A. No. That would be unusual.

20 Q. Were you aware of the fact that there were

21 going to be four lifeguards on break at the same time
22 leaving only two 15-year-old lifeguards at the family
23 pool at around the 11:00 o'clock, 11:30 time frame on
24 July 18, 2007?

25 A. No, sir, I wasn't aware of that.

□00237

1 Q. Would you have approved of that had you been
2 aware of that, knowing that there would be that many
3 four-year olds in your family pool?

4 MR. SNYDER: Objection, form.

5 A. Yes, I think so.

6 Q. (BY MR. MARRS) Knowing what you know now,
7 would you have approved that?

8 MR. SNYDER: Objection, form.

9 A. Yes, I think so.

10 Q. (BY MR. MARRS) The -- Let me show you
11 what's been marked as Exhibit Number 42. Tell the
12 jury what that is.

13 MR. MARRS: Can you pull it down?

14 A. Oh, that's our -- that's my bullet sheet for
15 the orientation that the counselors get before we
16 start camp.

17 Q. (BY MR. MARRS) Okay. And you make it very
18 clear that the counselors are not to misplace their
19 children, meaning their campers, correct?

20 A. Yes.

21 Q. Did a camp counselor misplace John
22 Pluchinsky in the nine minutes before he was
23 discovered floating facedown in the pool or can you
24 not say one way or the other?

25 MR. SNYDER: Objection, form.

□00238

1 A. Yes, sir, I'm not sure.

2 Q. (BY MR. MARRS) It may have happened, you
3 just can't say, correct?

4 A. Yeah. I just --

5 MR. SNYDER: Objection, form.

6 A. I'm just not sure.

7 Q. (BY MR. MARRS) And in these rules and
8 regulations for counselors, it says "Absolutely no
9 horseplay," correct, sir?

10 A. Right.

11 Q. Was there horse playing at the time of John
12 Pluchinsky's drowning or the discovery of John
13 Pluchinsky, to your knowledge?

14 A. No, sir, not from any of the things I've

15 read.

16 Q. Well, you've read CM #1 's e-mail and
17 she says there was horseplay, didn't she?

18 MR. SNYDER: Objection, form.

19 A. I could -- I guess I should read it again.
20 I'm not sure she used "horseplay" as the word. I
21 mean, I don't -- I think she -- Ms. CM #1 felt
22 there were a large number of counselors gathered in
23 one spot. I better read it again before I go -- say
24 anything else. I don't think she said they were --

25 Q. (BY MR. MARRS) Would you consider

□00239

1 counselors congregating together on the sun deck
2 paying attention to each other -- to other counselors
3 and not the children in the pool to be horseplaying
4 or not?

5 MR. SNYDER: Objection, form.

6 A. I can't say that.

7 Q. (BY MR. MARRS) You can say that that would
8 be unacceptable?

9 A. If the children were playing with them, no,
10 it would be fine.

11 Q. If they were --

12 A. If the children were right there at that
13 location.

14 Q. -- were paying attention to themselves,
15 other counselors instead of the children in the pool,
16 then certainly that would be unacceptable, wouldn't
17 it?

18 A. That's why we have two supervisors over to
19 make sure that that doesn't happen.

20 Q. Because it's unacceptable, correct?

21 A. Because we don't -- that's not part of
22 our -- our policy is that they do not do that.

23 Q. Because it's unacceptable, correct?

24 A. Yes. That's one of the absolute no-no's --
25 or I don't know. Yeah, absolute no-no's that we have

□00240

1 in our camp.

2 Q. And that's why you say at the bottom of this
3 form that, "There's a zero tolerance rule in effect.
4 If you cannot abide by the above rules and
5 requirements, you will be released from working for
6 the Houston Racquet Club" --

7 A. Yes.

8 Q. -- "Summer Camp 2007," correct --

9 A. Yes.

10 Q. -- sir?

11 A. Yes.

12 Q. You're saying, if you horseplay, if you pay
13 attention to each other instead of the children, if
14 you violate these rules, you're gone. That's what
15 you're telling them, correct, sir?

16 A. Yes.

17 Q. And did you enforce that rule?

18 A. If we caught counselors or their supervisors
19 in -- yes, of course.

20 Q. Okay. And what counselor was released,
21 fired on July 18, 2007 or at any time after John
22 Pluchinsky's death as a result of John Pluchinsky
23 drowning, if any?

24 A. We never had camp again.

25 Q. I'm not asking you that. What counselor was

□00241

1 fired by your club as a result of John Pluchinsky
2 drowning?

3 A. All --

4 Q. If any?

5 A. All camp -- Camp was cancelled. All
6 counselors were released.

7 Q. I'm not asking you that.

8 A. We didn't -- we didn't fire anybody.

9 Q. You did not fire anybody as a result of John
10 Pluchinsky's death, correct?

11 A. No, sir.

12 Q. Is that correct?

13 A. Yes, that's correct.

14 Q. And did you -- Part of your rule was that
15 "All counselors must get in the water with the
16 children during their designated swim time," correct?

17 A. Yes, sir.

18 Q. "Keep clipboard with you at all times"?

19 A. Yes, sir.

20 Q. Did you require each counselor to sign-off
21 on what's marked as Exhibit Number 43, the Houston
22 Racquet Club Camp Counselor Agreement Form?

23 A. We hand that -- we hand that out the day of
24 the -- of our orientation, orientation day. And so
25 everybody that showed up would do their payroll work,

□00242

1 filling out the W-2s. I mean, we had someone from
2 accounting there to do that. And we would have them

3 sign this if they had gone through our --

4 Q. Would you -- if the rules are important to
5 the club for the camp counselors to follow, would you
6 insist that all the camp counselors sign-off on this
7 form saying that they will abide by the rules and
8 they have read them?

9 MR. SNYDER: Objection, form.

10 A. Yeah. We get everybody that comes to that
11 orientation meeting to sign -- to sign that one.

12 Q. (BY MR. MARRS) That's not my question.

13 A. I'm sorry.

14 Q. Why don't we have signed forms for 4 y/o B-CC #3 ,
15 4 y/o B-CC #4 , 4 y/o B-CC #2 ? Do you know why?

16 A. No, sir.

17 Q. Should there be signed forms for those
18 counselors if indeed they were working as counselors
19 during the 2007 summer camp?

20 A. I believe so. If they were at that meeting,
21 they would have got it that day or I would have tried
22 to get that to them to get them to sign it.

23 Q. Why was it necessary to warn your teenage
24 counselors to, in big bold letters, "pay attention to
25 the CHILDREN, NOT TO OTHER COUNSELORS"? Why was that

□00243

1 important to stress so strongly to the counselors?

2 A. Because we want them to interact with the
3 children and play with the children, not anybody else
4 or other counselors.

5 Q. Had this been a problem in past summer
6 camps, counselors, teenagers not watching the
7 children?

8 A. No, sir, not a problem. It was -- it
9 probably happened, I guess, but...

10 Q. Well, it had been a habitual problem at the
11 Houston Racquet Club in summers past, hadn't it?

12 MR. SNYDER: Objection, form.

13 Q. (BY MR. MARRS) That counselors had to be
14 repeatedly reminded, "watch the children, not play or
15 converse among yourselves"?

16 MR. SNYDER: Objection, form.

17 A. No, sir, that was never a problem.

18 Q. (BY MR. MARRS) Never a problem?

19 A. No.

20 Q. Had you ever terminated a counselor for
21 violating these rules?

22 A. Yes.

23 Q. When?

24 A. 2006 or possibly 2005 is the -- I can
25 remember that specifically.

□00244

1 Q. How many, one counselor?

2 A. Two counselors that day.

3 Q. And who were they?

4 A. CC-K (phonetic), who's a member. And

5 I cannot think of the -- there was a little -- there

6 was another counselor with her.

7 Q. For doing what?

8 A. The children were playing tennis and these

9 two girls were -- I had two counselors out working

10 with tennis -- they were playing tennis and two

11 counselors were out in the sun working with them.

12 Two counselors, as I walked out, were sitting in the

13 shade and I released them both that day.

14 Q. Have any other counselors been fired by the

15 Houston Racquet Club, to your knowledge, for not

16 paying sufficient attention to children while being

17 in the swimming pool?

18 A. No, sir.

19 Q. Have you ever fired a counselor for that in

20 the last decade, to your knowledge?

21 A. No, sir.

22 Q. Had you -- How many complaints have you

23 received about counselors not paying attention to

24 children in the pool?

25 A. Over my years doing camp?

□00245

1 Q. Yes, sir.

2 A. Very few.

3 Q. Meaning what?

4 A. Very -- I don't know specific -- very few.

5 Our camp rarely gets any complaints.

6 Q. Sometimes you have?

7 A. Over the years I cannot think -- I'm sure

8 that I have.

9 Q. Well, we went over a number of complaints

10 that Steve Griffin got yesterday and the day before

11 with Mr. Griffin, correct?

12 A. Yes.

13 Q. And you were here for that testimony?

14 A. Yes, sir.

15 Q. Now, were you privy to or -- those

16 complaints?

17 A. I had never heard -- M #1 's I had. I've
18 read M #1 's and Mr. HRCBM-B's, but some of the others
19 I had never read or heard until yesterday.

20 Q. Okay. HRCBM-B's, was that shared with
21 you in June of 2007?

22 A. Yes. Steve immediately, we either meet --
23 he usually -- I think he forwarded it to me and we
24 met on it.

25 Q. Does 4 y/o B-CC #3 have any kind of ADD or ADHD

□00246

1 problem, to your knowledge?

2 A. 4 y/o B-CC #3 ? I know of nothing like that.

3 Q. Any of the counselors that worked on that
4 day, July 18th, have any attention deficit problem,
5 to your knowledge?

6 A. No, sir, not to my knowledge.

7 Q. Have -- Do you know of any incidences or
8 reported incidences of Guillermo Palmer having
9 affairs with people at the Houston Racquet Club?

10 MR. SNYDER: Objection, form.

11 Don't answer that.

12 MR. MARRS: Well, I think that might be
13 highly relevant in this case.

14 MR. SNYDER: You're going to have to
15 explain it to me, but he's not going to answer that
16 question.

17 Q. (BY MR. MARRS) Have the -- Well, have there
18 been any complaints, to your knowledge, of that
19 nature to the club?

20 MR. SNYDER: Objection, form.

21 Don't answer that.

22 MR. MARRS: Okay. We'll go to the
23 judge on that one.

24 Q. (BY MR. MARRS) You could answer my question
25 if not for the objection by your counsel and

□00247

1 instruction not to answer, correct, sir?

2 A. Yes, I could answer that.

3 Q. And you choose not to because your counsel
4 is asking you not to?

5 A. Yes.

6 Q. Correct, sir?

7 A. Yes, sir.

8 Q. Okay. And what about 4 y/o B-CC #2, one of
9 the other counselors, has she had any problems in
10 school in terms of behavioral problems, to your

11 knowledge?

12 A. No, sir. I don't know 4 y/o B-CC #2 beyond camp.

13 Q. Has any lifeguard been fired as a result of
14 not adequately watching children in the Racquet Club
15 pool, to your knowledge?

16 A. Specific what you just said?

17 Q. Yes, sir.

18 A. No, not to my knowledge.

19 Q. What's the purpose of your HRC club rule
20 that any child under eight must be accompanied by a
21 responsible adult?

22 A. In the pool area or just in general or?
23 We have age limits in the fitness center, but I'm
24 not --

25 Q. (BY MR. MARRS) Exhibit Number 44, the
□00248

1 Houston Racquet Club pool rule -- or rules under
2 Swimming Pool says in Number 4, "Children under
3 8 years of age must be accompanied at all times by a
4 responsible adult." What's the purpose of that rule?

5 A. I would sure like to know the date on that
6 because we had -- before John passed away, we had a
7 "swim at your own risk" if it was after hours or
8 something like that. I -- and I -- if I could get a
9 date for that, then I might be able -- Steve may
10 have -- I think that was it, so we could keep any
11 children out of the pool at night when we are closed,
12 but we had a "swim at your own risk" or something.

13 Q. Well, that's discussed in Paragraph 2, isn't
14 it? Paragraph 4 just says, "Children under 8 years
15 old must be accompanied at all times by a responsible
16 adult." It doesn't say after hours. It just says
17 "under 8 must be accompanied by a responsible adult,"
18 correct?

19 A. Yes, that's what it says.

20 Q. Is that the current applicable rule for the
21 Houston Racquet Club, to your knowledge?

22 A. Guillermo would be or Steve might be better
23 to answer that. I -- we can't -- children can't come
24 in now without lifeguards on duty, so certainly, a
25 mom could drop her children off and with life --

□00249

1 because we would have lifeguards on duty, they would
2 be able to swim.

3 Q. Number 5 says, "A 'zero depth' area of the
4 Resort Pool is exclusively for children 6 years of

5 age and under." Is that still the current rule, to
6 your knowledge?

7 A. I'm not sure. I think so.

8 Q. Who was the pool manager on July 18th?

9 A. Mr. Palmer.

10 Q. Is he primarily responsible for the pool
11 area?

12 A. Yes.

13 Q. And who is the -- responsible for
14 supervising the lifeguards and managing the
15 lifeguards, is he?

16 A. Yes, Mr. Palmer.

17 Q. Let me show you what's been marked as
18 Exhibit Number 46. This is a letter from the Texas
19 Department of Family and Protective Services to you.
20 You've seen that before, dated August 15, 2007.

21 A. Yes, sir.

22 Q. And it talks about they're citing you for
23 neglecting a child, causing the death of a child and
24 failing to supervise camp counselors, correct, sir?

25 A. Yes, sir.

□00250

1 Q. And it states certain facts on Page 2 about
2 witnesses saying 10 counselors were playing with each
3 other, several camp counselors hanging around,
4 counselors pushing and playing with each other. Is
5 that the kind of conduct that you believe is safe
6 conduct at your family pool or not?

7 A. No. We would not want that at our pool.

8 Q. Because that would be unsafe, wouldn't it,
9 if that were true?

10 A. Yes. It's not our policy to do things like
11 that.

12 Q. Because that would be unsafe if it were true
13 or do you think that that kind of conduct is safe
14 conduct at your family pool?

15 A. It's certainly not conduct that we allow to
16 happen.

17 Q. Because if it does happen, that could put
18 the safety of children in jeopardy, couldn't it?

19 A. That's possible, yes.

20 Q. And it says "You failed to properly
21 supervise the camp counselors," doesn't it?

22 A. Yes, sir.

23 Q. "Your actions placed J.P.", John Pluchinsky,
24 "and the other children in the pool at risk." It

25 goes on to say, "resulting in his drowning," correct,

□00251

1 sir?

2 A. That's what it says, yes, sir.

3 Q. Now, and you have a lawyer that's
4 representing you, Mr. -- is it Mike Wall with respect
5 to the CPS investigation?

6 A. Yes, sir, to the -- to the -- to the CPS.

7 Q. And Exhibit 47 is a letter that Mr. Wall
8 sent to the Family and Protective Services, correct,
9 sir?

10 A. Yes, sir.

11 Q. And in that letter he says that, "Mr. Lamkin
12 supervised the counselors to assure compliance with
13 such rules and corrected counselors who did not
14 comply with the same." Have you ever corrected a
15 counselor with respect to their inadequate
16 supervision of children in your family pool?

17 MR. SNYDER: Objection, form.

18 A. If I might hear that one more time, please.

19 Q. (BY MR. MARRS) Have you ever corrected
20 counselors with respect to inadequate supervision of
21 children in your family pool?

22 MR. SNYDER: Objection, form.

23 A. No, I have not.

24 Q. (BY MR. MARRS) Ever in the decade that
25 you've been involved with the summer camp programs at

□00252

1 Racquet Club?

2 A. Disciplined the counselor at -- for
3 something that happened at the pool?

4 Q. Corrected a counselor for not adequately
5 supervising children in the pool?

6 A. No, sir.

7 Q. It goes on to say, "Mr. Lamkin's
8 supervision, including giving a detailed orientation
9 observing and correcting counselors and participating
10 in daily meetings with counselors." Daily meetings
11 with counselors, you talked about the 15-minute
12 meeting that CD might have. Are you
13 telling us that you had daily meetings with
14 counselors every single day during the 2007 summer
15 camp?

16 A. Twice a day.

17 Q. Okay. For how long?

18 A. 15 to 30 minutes before camp; 15 to

19 30 minutes after camp.

20 Q. And the 15 minutes beforehand, have we
21 already talked about that? About the scheduling and
22 all that from 8:30 to 8:45?

23 A. Yes, sir.

24 Q. And what's the 15 minutes after camp, what
25 would you talk about during those meetings?

□00253

1 A. On different days, we would -- every -- it
2 would just be kind of a debriefing basically. We
3 would just go over items of the day how -- if we
4 tried a new program or what have you. It would just
5 be a debriefing, basically.

6 Q. Okay. And do you have any writings that
7 would show what you did during these meetings?

8 A. What the topics were and stuff? No, sir.

9 Q. Any writings that depict what you told
10 counselors during any of these meetings?

11 A. No, sir.

12 Q. Do you have any agenda or notes regarding
13 these meetings?

14 A. CD might have some notes. I don't have
15 any notes on that. I...

16 Q. Aside from CD having meetings, would you
17 specifically, you yourself have meetings every day
18 with counselors during the 2007 summer camp?

19 A. If I had anything to -- I was always there
20 at every afternoon meeting for the days we had camp.
21 If there was any issues, I certainly spoke on them.
22 If CD wanted me to say something, I certainly did
23 if we were --

24 Q. And if CD never said anything to you,
25 would you still have meetings with counselors every

□00254

1 single day?

2 A. At that -- after car pool in the afternoon
3 meetings?

4 Q. During 2007 summer camp, period.

5 A. Sure, sure.

6 Q. Now, what -- did the four-year olds --
7 four-year-old boys, would they get a tour of the pool
8 prior to getting into the family pool or not?

9 A. When the counselors first took them over
10 there?

11 Q. Yes, sir.

12 A. That would be a question for the

13 counselors. I don't know what they did when they --

14 Q. Okay.

15 A. -- got over to get to the pool.

16 Q. You left that up to the individual
17 counselors?

18 A. The group as a whole, yeah.

19 Q. And would they show the children, the
20 four-year olds exactly where different depths are in
21 the pool?

22 A. I can't -- I don't know.

23 Q. You never directed them to do that?

24 A. No, sir.

25 Q. What is the orientation that is mentioned in

□00255

1 this letter by your lawyer, detailed orientation that
2 you would give? Anything that we haven't discussed
3 already?

4 A. No, sir. I think that's the bullet that --
5 the bullet sheet that I -- that I go over during that
6 first orientation.

7 Q. Okay. That's that Exhibit Number --

8 A. Yeah, that. I think that's what --

9 Q. -- 42 that we looked at before --

10 A. -- that's referring to.

11 Q. Exhibit 42 encompasses the orientation
12 that's mentioned in your lawyer's letter; is that
13 correct?

14 A. Yes.

15 Q. And part of that is to cooperate with the
16 lifeguards because safety is the counselor's
17 responsibility and the lifeguards, correct?

18 A. Yes.

19 Q. And when it says in your counsel's letter
20 that the program had in place a camp director who
21 supervised the counselors on a day-to-day basis, who
22 would that be?

23 A. Ms. CD . Or I say that -- Ms. Bolden or
24 whoever wrote that, it may have been talking about
25 me.

□00256

1 Q. Because she did not act as camp director for
2 the 2007 summer camp, did she?

3 A. CD ?

4 Q. Yes, sir.

5 A. Yes. She was -- she was the camp director.

6 Q. Do you know if that's who's being referred

7 to in Mr. Wall's letter?

8 MR. SNYDER: Objection, form.

9 A. I don't know.

10 Q. (BY MR. MARRS) The letter also refers to
11 the autopsy report of John Pluchinsky. What
12 relevance does that play with respect to responding
13 to the Family Protective Services, to your knowledge?

14 A. None that I know of.

15 MR. SNYDER: Objection, form.

16 THE WITNESS: Okay. Sorry.

17 Q. (BY MR. MARRS) And aside from what you've
18 already testified to, was there any other training of
19 counselors provided to the counselors?

20 A. Other than the orientation day?

21 Q. Yes, sir.

22 A. No, sir.

23 Q. And what was provided on orientation day
24 we've already looked at in your bullet point list?

25 A. I would -- I would discuss all the items on

□00257

1 that. And then CD would walk the grounds showing
2 if you -- where each location was. If you went to
3 the tennis courts, which tennis courts we were
4 allowed to use; if you went to the practice courts,
5 where you would be allowed to use; if you went to the
6 playground, where that was. If you -- they would
7 walk the nature trail, showing where you could or
8 could not get off. And then the sidewalks that we
9 had to use to get from our camp house when they went
10 to the pavilion, the swimming pool, the basketball
11 courts, the racquetball courts or the volleyball
12 courts.

13 Q. With respect to pool safety, was there any
14 other training provided to counselors other than what
15 you've already discussed?

16 A. No, sir.

17 Q. Do you know what in-service training is?

18 A. I think so.

19 Q. Did you provide in-service training to your
20 counselors or lifeguards prior to John Pluchinsky's
21 death?

22 A. Other than that orientation, we didn't do
23 any other training, other than the daily -- the daily
24 debriefing or the morning -- the morning.

25 Q. Well, you wouldn't consider that in-service

□00258

1 training, would you?

2 MR. SNYDER: Objection, form.

3 A. I'm not sure.

4 Q. (BY MR. MARRS) What does that mean to you?

5 A. Well certainly, if CD or myself had a new
6 game to show them or something like that, we
7 demonstrated that, I guess I would consider that
8 in-service training.

9 Q. Were you involved in the decision to
10 transfer Mr. Palmer from the --

11 A. No, no, no.

12 Q. -- pro shop in tennis to lifeguard manager
13 or pool manager?

14 A. I was in on that. Guillermo worked --
15 Mr. Palmer worked in the -- was no longer at the --
16 was no longer involved in the tennis department. He
17 worked in the fitness department.

18 Q. Okay.

19 A. Yes. And, yes, I was in -- Steve and I --
20 Steve and I discussed Mr. Palmer going into the
21 position of pool manager.

22 Q. And you believe he was -- had an adequate
23 background to be an efficient and safe pool manager
24 and aquatics manager?

25 A. Yes, I did.

□00259

1 Q. Based on what?

2 A. Mr. Palmer has a Bachelor of Science in
3 Sociology, so I like the fact that that might help
4 him work with counselors. He had a very good -- he
5 had a good record working with our tennis camps for
6 years and years. For many years -- he started in '91
7 and he had taught --

8 Q. With respect to pool safety, pool programs
9 and lifeguards, what particular background experience
10 did you deem him to have that would qualify him to be
11 the lifeguard manager or pool manager or aquatics
12 director?

13 A. He had been a swim coach for us a couple
14 years. He was a certified lifeguard and again, he
15 had a very good reputation working with kids and
16 parents.

17 Q. Anything else?

18 A. On Mr. Palmer?

19 Q. Yes, sir.

20 A. No.

21 Q. Can you point out for me exactly so I can
22 just mark it on Exhibit 14 that blind spot you
23 referred to earlier when you and Mr. Palmer were
24 deciding where to put the lifeguard chair?
25 A. It looks like there's a little gold spot

□00260

1 there, actually.
2 Q. Okay. Right here (indicating)?
3 A. Yes.
4 Q. Okay. What's it --
5 A. And from there to the side, yeah. Right in
6 there.
7 Q. Right around here (indicating)?
8 A. Yes, sir.
9 Q. And is it okay if I put "blind spot per
10 GPDL"? Would that adequately describe it?
11 A. Sure.
12 Q. And had Guillermo Palmer been a lifeguard
13 supervisor prior to becoming the lifeguard manager,
14 to your knowledge?
15 A. I don't think so.
16 Q. Do you know how long he had been a certified
17 lifeguard prior to becoming lifeguard manager at your
18 club?
19 A. No, I don't.
20 Q. And what lifeguard training did the Racquet
21 Club provide to him prior to him becoming lifeguard
22 manager, if any?
23 A. I'm not -- I'm not sure. I think we may
24 have paid for his certification. I am not sure --
25 but certification as a lifeguard.

□00261

1 Q. Oh, so prior to coming to the Racquet Club
2 and becoming lifeguard manager, you don't know if he
3 was even a certified lifeguard?
4 MR. SNYDER: Objection, form.
5 A. I'm not sure.
6 Q. (BY MR. MARRS) Have you ever sent him to
7 lifeguard training or lifeguard manager seminar or
8 course or training?
9 A. No, sir, not manager, but I -- we -- I'm not
10 sure, but I think we paid for his -- and we may not
11 have -- but I think we may have paid for his
12 certification.
13 Q. Lifeguard certification?
14 A. Or reimbursed him or something.

15 Q. Would that have been before he became
16 lifeguard manager?

17 A. I'm not sure.

18 Q. Is he a certified lifeguard manager? Is
19 there a certification for lifeguard manager, to your
20 knowledge?

21 A. I don't know.

22 Q. Had you ever provided him with a lifeguard
23 training manual, to your knowledge?

24 A. I think that's -- I think that comes with
25 the course. He has one and I think he got it with

□00262

1 his courses.

2 Q. Is he a certified lifeguard instructor, to
3 your knowledge?

4 A. No, I don't think so.

5 Q. Or a certified CPR or AED instructor, to
6 your knowledge?

7 A. No, he's not.

8 Q. Yeah. So what qualified him to train your
9 lifeguards?

10 A. I guess being the pool manager, the aquatics
11 director.

12 Q. He started training your lifeguards when he
13 became aquatics director, didn't he?

14 A. Training? I don't know if training. I
15 think he managed the lifeguards. He managed our
16 lifeguards. They were all certified by --

17 Q. Red Cross or whatever?

18 A. This -- yes, sir, the same -- the same
19 organization that certified him.

20 Q. So any other training aside from that would
21 have been working with the Racquet Club in that
22 position; is that correct?

23 A. Yes, sir, I think so.

24 Q. Are you aware of the protocols used by
25 Mr. Guillermo Palmer to train his lifeguards?

□00263

1 A. No.

2 Q. Are you familiar with those at all?

3 A. No, sir.

4 MR. MARRS: Give me two minutes.

5 VIDEOGRAPHER: Off the record. The
6 time is 6:54 p.m.

7 (Brief recess.)

8 VIDEOGRAPHER: Back on the record. The

9 time is 6:58 p.m.

10 Q. (BY MR. MARRS) And, Mr. Lamkin, was there
11 any coordination, to your knowledge, between
12 lifeguard scheduling and rotation and camp counselor
13 or camper scheduling?

14 A. Yes. We did -- G -- Guillermo, Mr. Palmer
15 and I did meet regularly on that when we said -- at
16 the first season, this -- we've got 119 kids or
17 whatever, I would let him know so that he could -- he
18 could schedule and he could -- he could look at the
19 schedules as well.

20 Q. Well, but how about with respect to July 18,
21 2007 and the specific number of campers that would be
22 in the pool at that particular day and the specific
23 number of lifeguards and their age and their
24 experience and whether those two things were
25 compatible with each other, did you talk to Guillermo

□00264

1 Palmer about that?

2 A. Several times. Not -- maybe not that day.
3 We -- that was an ongoing thing between us, ongoing
4 every day.

5 Q. Sure. How about on July 18th?

6 A. We'd met two or three times that day. I'd
7 seen him at the pool twice and we had a morning
8 meeting early.

9 Q. Well, I mean in the morning before
10 11:00 o'clock.

11 A. Not specifically to four-year olds are
12 coming at whatever, but it was -- how does camp look
13 today or stuff like that. Just a general meeting
14 between the two of us in our two departments.

15 Q. What kind of coordination existed with
16 respect to the training and supervision of lifeguards
17 and the training and supervision of counselors and
18 counselor supervisors?

19 A. I don't know.

20 Q. And what kind of coordination existed, if
21 any, between safety issues for lifeguards and what
22 they might have to deal with on a safety basis and
23 counselors' safety issues and what they might have to
24 deal with, if any?

25 A. Done together, are you asking that? I'm

□00265

1 sorry.

2 Q. Coordination of those issues, safety

3 issues.

4 A. None.

5 Q. And are you aware of --

6 A. Well, no, no. I state that lifeguards have
7 final say at the pool.

8 Q. Sure.

9 A. I put that. But not anything else.

10 Q. And are you aware of the fact that camp --
11 most of the counselors did not know the lifeguards
12 that they were working with on any given day? Were
13 you aware of that?

14 A. I probably need the lifeguards -- I mean,
15 and the counselors to answer that. I'm not sure on
16 that.

17 Q. Have you seen anything to that effect in the
18 interviews?

19 MR. SNYDER: Objection, form.

20 A. While I'm thinking, I can't think of one.
21 There may -- there certainly may be one of the --
22 that one of the counselors or lifeguards that doesn't
23 know somebody else.

24 Q. (BY MR. MARRS) Do you know why Supv CC #1
25 and Supv CC #2 did not sign-off on the camp

□00266

1 counselor form indicating they had read the rules?

2 A. No, sir.

3 Q. Are there any photographs, diagrams or
4 documents, witness statements or any documents
5 relating to this incident that you're aware of that
6 have not been forwarded to your lawyer in this case?

7 A. No, sir, not that I know of. Steve,
8 Mr. Griffin told me to send me everything we had to
9 make available to Mrs. Bolden and to Audrey -- to
10 Mike Walls.

11 Q. Okay.

12 A. I know that Sergeant Walpole, I think, took
13 pictures. I don't know if I have ever seen those. I
14 know I have never seen those.

15 Q. And did you --

16 A. And the medical examiner took pictures. I
17 don't know if that's --

18 Q. Did the Houston Racquet Club provide to the
19 CPS then the CM #1 e-mail or HRCBM-B
20 e-mail, to your knowledge?

21 A. Not -- I don't know.

22 Q. You don't know one way or the other?

23 A. No, sir. I don't know.

24 Q. Did the CPS ask the Racquet Club, to your
25 knowledge, for any complaints about lifeguards or

□00267

1 counselors?

2 A. Not specific to that, I don't think. I

3 think she asked me for any moms that had been there,
4 things like that. I don't -- no, I don't think so.

5 Q. Was there a written request from the CPS
6 Family Protective Services for information or
7 documents?

8 A. Yes. Ms. Bolden would e-mail me.

9 Q. Okay.

10 A. And I -- and I forwarded that. I showed
11 Steve if he hadn't seen it and then I gave everything
12 to Ms. Bolden.

13 Q. Okay.

14 MR. MARRS: We do request -- I've been
15 meaning to request any requests made by the CPS for
16 information relating to John Pluchinsky's death. We
17 have not received those, including e-mails or any
18 writings from the CPS Family Protective Services. We
19 request that those be produced to us. And the
20 calendar, can you put that as -- and as well as
21 Mr. Lamkin's calendar, Mr. Griffin's calendar and
22 Mr. Palmer's calendar.

23 Q. (BY MR. MARRS) And did the CPS ask who was
24 present during the time that John Pluchinsky was in
25 the pool?

□00268

1 A. I don't remember.

2 Q. Could have, you just don't know?

3 A. If they did, I gave them -- I gave them any
4 names that I knew.

5 Q. Did you tell them about CM #1, to
6 your knowledge?

7 MR. SNYDER: Objection, form.

8 A. I don't -- I don't remember. Ms. CM #1 --
9 I don't know. I don't know if they asked about that.

10 Q. (BY MR. MARRS) Or M #6 (phonetic)
11 or M #1? You can answer.

12 A. Ms. M #6, no, I don't think so.

13 Ms. M #1, they did because she -- they asked for
14 every four-year-old mom or parents.

15 Q. And have you been reprimanded or counseled
16 by anybody at the Houston Racquet Club as a result of

17 John Pluchinsky's death?

18 A. Like counseling or do you mean --

19 Q. No, sir. Have you been reprimanded by
20 anyone from the Racquet Club or been demoted or had a
21 decrease in salary as a result of John Pluchinsky's
22 death?

23 MR. SNYDER: Objection, form.

24 A. I don't -- I don't know.

25 Q. (BY MR. MARRS) Well, to date have you? You

□00269

1 haven't been fired, correct?

2 A. No, sir.

3 Q. Have you been demoted by Mr. Griffin, your
4 boss, as a result?

5 A. No. We haven't discussed whether I will --
6 I would ever do -- whether I would do camp. I mean,
7 we --

8 Q. Okay. Well, you haven't been told that
9 you've been demoted, have you?

10 A. No.

11 Q. And you haven't been told that you have a
12 decrease in pay or bonus, have you?

13 A. No, sir.

14 Q. Okay. And your responsibilities haven't
15 changed yet, to your knowledge, correct?

16 A. Other than not preparing for summer camp,
17 which I would be doing at this time.

18 Q. But you don't know that yet, correct?

19 MR. PLETCHER: No. He said he would be
20 doing this.

21 A. I would -- no, there's -- nothing has
22 changed.

23 Q. (BY MR. MARRS) Nothing has changed.

24 MR. MARRS: Well, I'll adjourn the
25 deposition at this time subject to receiving

□00270

1 additional documents.

2 MR. SNYDER: Which are?

3 MR. MARRS: Which I presume you --

4 MR. SNYDER: E-mails?

5 MR. MARRS: Which are the calendar, if
6 they still exist, the e-mails to the CPS and any
7 other documents that I've requested even from
8 Mr. Griffin that might involve Mr. Lamkin.

9 MR. SNYDER: Okay. And again --

10 MR. MARRS: I assume you --

11 MR. SNYDER: -- I'm not representing
12 that I agree or disagree, but anyway...
13 VIDEOGRAPHER: Off the record. The
14 time is 7:08 p.m.
15 (Deposition recessed at 7:08 p.m.)
16 (Signature required.)
17
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□00271

1 CHANGES AND SIGNATURE
2 WITNESS NAME: DAVID LAMKIN
DATE OF DEPOSITION: FEBRUARY 29, 2008

3
4 PAGE/LINE CHANGE FROM/CHANGE TO REASON

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□00272

1
2 I, DAVID LAMKIN, have read the foregoing deposition
and hereby affix my signature that same is true and

3 correct, except as noted above.

4

5 DAVID LAMKIN

6

7 THE STATE OF TEXAS)

8 COUNTY OF HARRIS)

9

10 Before me, _____, on this day
11 personally appeared _____, known to me (or
12 proved to me on the oath of _____ or
13 through _____) to be the person whose
14 name is subscribed to the foregoing instrument and
15 executed the same for the purposes and consideration
16 therein expressed.

17

18

19 Given under my hand and seal of office this

20 _____ day of _____, 2008.

21

22

23

24

25

26

Notary Public in and for
The State of Texas

27

28

29

30

□00273

1

NO. 2007-54438

2 DAVID AND KATHLEEN) IN THE DISTRICT COURT

PLUCHINSKY, INDIVIDUALLY)

3 AND AS REPRESENTATIVES)

OF THE JOHN ALBERT)

4 PLUCHINSKY ESTATE)

Plaintiffs)

5

VS.) HARRIS COUNTY, TEXAS

6

HOUSTON RACQUET CLUB,)

7 STEPHEN GRIFFIN, DAVID)

LAMKIN, GUILLERMO)

8 PALMER, AND)

LG Supv,)

9

)

Defendants) 281st JUDICIAL DISTRICT

10

11 REPORTER'S CERTIFICATION
12 TO THE VIDEO DEPOSITION OF DAVID LAMKIN
13 FEBRUARY 29, 2008

12

13 I, Sherry Hale, Certified Shorthand Reporter in and
14 for the State of Texas, hereby certify to the
15 following:

14

15 That the witness, DAVID LAMKIN, was duly sworn by the
16 officer and that the transcript of the oral
17 deposition is a true record of the testimony given by
18 the witness;

19 That the deposition transcript was submitted on
20 _____, 2008, to the witness or to the attorney
21 for the witness for examination, signature, and
22 return to Sherry Hale Reporting & Associates, by
23 _____, 2008.

24 That the amount of time used by each party at the
25 deposition is as follows:

26 Mr. Scott D. Marrs - 6 Hours: 35 Minutes

27

28 That pursuant to information given to the deposition
29 officer at the time said testimony was taken, the
30 following includes all parties of record:

31

32

□00274

33 1 FOR THE PLAINTIFFS:

34 Mr. Scott D. Marrs

35 2 Mr. Matthew G. Pletcher

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I further certify that I am neither counsel for,
14 related to, nor employed by any of the parties in the
action in which this proceeding was taken, and
15 further that I am not financially or otherwise
interested in the outcome of the action.

16 Further certification requirements pursuant to Rule
17 203 of TRCP will be certified to after they have
occurred.

18 Subscribed and sworn to by me on this _____ day of
19 _____, 2008.
20
21

22 _____
Sherry Hale
Texas CSR No. 6215
23 Expiration Date: 12/31/2008
Firm Registration No. 510
24 4545 Post Oak Place, Suite 350
Houston, Texas 77027
25 (713) 626-2629

□00275

1 FURTHER CERTIFICATION UNDER RULE 203 TRCP

2 The original deposition was/was not _____ returned
to the deposition officer on _____ ;

3
If returned, the attached Corrections and Signature
4 page contains any changes and the reasons therefor;
5 If returned, the original deposition was delivered to
_____, Custodial Attorney;

6
That \$ _____ is the deposition officer's charges to
7 the Plaintiffs for preparing the original deposition
transcript and any copies of exhibits;

8
That the deposition was delivered in accordance with
9 Rule 203.3, and that a copy of this certificate was
served on all parties shown herein and filed with the
10 Clerk.

11

12

Certified to by me this _____ day of _____,

13 2008.

14

15

16

17

18

Sherry Hale

Texas CSR No. 6215

19

Expiration Date: 12/31/2008

Firm Registration No. 510

20

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